KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.
Matthew J. Gold
Robert Tuchman
500 Fifth Avenue
New York, New York 10110
Tel: (212) 986-6000

Counsel to the State of Washington

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
PURDUE PHARMA L.P., *et al.*,	Case No. 19-23649 (RDD)
Debtors.	(Jointly Administered)

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s):

1. The State of Washington, a Creditor.

Part 2: Identify the subject of this appeal

2. This appeal is from the Decision of Judge Drain (the "Decision") confirming the Debtors' Eleventh Amended Joint Chapter 11 Plan of Reorganization (the "Plan").

3. The Decision was rendered on September 1, 2021. A rough copy of the transcript of the Decision is attached herewith.

Part 3: Identify the other parties to the appeal

4. The names of all other parties to the Decision, and the names, addresses and telephone numbers of their respective attorneys, are as follows:

	Party	Attorney
1.	Purdue Pharma L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017

		Tel: (212) 450-4000
2.	Purdue Pharma Inc.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
3.	Purdue Transdermal Technologies L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
4.	Purdue Pharma Manufacturing L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
5.	Purdue Pharmaceuticals L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
6.	Imbrium Therapeutics L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
7.	Adlon Therapeutics L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
8.	Greenfield BioVentures L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
9.	Seven Seas Hill Corp.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
10.	Ophir Green Corp.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
11.	Purdue Pharma of Puerto Rico	Davis Polk & Wardwell LLP 450 Lexington Avenue

		New York, NY 10017 Tel: (212) 450-4000
12.	Avrio Health L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
13.	Purdue Pharmaceutical Products L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
14.	Purdue Neuroscience Company	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
15.	Nyatt Cove Lifescience Inc.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
16.	Button Land L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
17.	Rhodes Associates L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
18.	Paul Land Inc.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
19.	Quidnick Land L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
20.	Rhodes Pharmaceuticals L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000

21.	Rhodes Technologies	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
22.	UDF LP	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
23.	SVC Pharma LP	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000
24.	SVC Pharma Inc.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000

Part 4: Optional election to have appeal heard by District Court

5. Appellant elects to have the appeal heard by the United States District Court rather than the Bankruptcy Appellate Panel.

Part 5: Sign below

Dated: September 1, 2021
New York, New York

Respectfully submitted,

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.

By: */s/ Matthew J. Gold*
Matthew J. Gold
Robert M. Tuchman

500 Fifth Avenue
New York, New York 10110
Tel: (212) 986-6000
Fax: (212) 986-8866
E-mail: mgold@kkwc.com
rtuchman@kkwc.com

Attorneys for the State of Washington

ROBERT W. FERGUSON
Attorney General of the State of Washington

By: */s/ Tad Robinson O'Neill*
Tad Robinson O'Neill

Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Tel: (206) 254-0570
E-mail: tad.oneill@atg.wa.gov

Attorneys for the State of Washington

CERTIFICATE OF SERVICE

I, Juliet Remi, hereby certify that, on September 1, 2021, I caused true and correct copies of the foregoing document to be served (i) by the Court's Case Management/Electronic Case File (CM/ECF) System to all parties who are deemed to have consented to electronic service; (ii) by email upon the parties who provided email addresses set forth in the Master Service List maintained by the Debtors in respect of these chapter 11 cases; and (iii) by email upon the Office of the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, paul.schwartzberg@usdoj.gov).

/s/ Juliet Remi
Juliet Remi

THE COURT: Okay good morning, this is Judge Drain, we're here in in re: Purdue Pharma LP et al. This mornings hearing was scheduled for me to give me bench ruling on the debtors request for confirmation of their amended chapter 11 plan. I received a black lined version of certain important but still relatively minor changes to the debtors 10th amended joint chapter 11 plan yesterday. Which is now in light of those changes the 11th amended joint chapter 11 plan. I also received a revised proposed confirmation order including proposed findings of fact and conclusions of law. Which is over a hundred pages long, I have not gone through it in detail, my ruling will be in detail and I'm comfortable with the proposed findings and conclusions,ly keep them and I may add to them and my ruling will be part of the record as far as the proposed findings and conclusions are concerned.

But I understand that the debtors wanted to address the court briefly regarding the changes to the plan and the resolution of at least one objection and I'm happy to hear that.

MR. HUEBNER: Thank you very much, your Honor, can you see and hear me clearly?

THE COURT: Yes.

MR. HUEBNER: Okay. Your Honor, for the record, Marshall Huebner on behalf of the debtors and debtors concession. A couple of quick updates, which I think are hopefully positive. Number one, you know, since the court's direction at several of the hearings including both Wednesday and Friday, various documents have been amended in a way that we hope now comports with the court's vision. The primary changes to the plan that we are not going to walkthrough unless the court has questions are to finalize what I would call the material or maybe even radical narrowing of the Sackler releases, which is really three different axis. Number one, which parties are covered and get the benefit of the releases and those changes I believe are now in. Number two, what is the cope of the releases and of course

the court gave quite clear direction limited very substantially /TAOZ scope compared to the original set of agreements reached and filed by the parties and number three, I guess who is bound by the releases, this is the sort of any other person to holders of claims and causes of action to just holders of claims. And I believe that hopefully we got it right after several tries and the court's continuing clear interim rulings or direction tos narrow the releases. The second item, your Honor, just for the benefit of everyone's knowledge is the operating injunction for NewCo. That is one of the many documents along with many other structures in the plan, including a brand new board of directors and other things selected by governmental entities to ensure that NewCo does only the things and everybody would want it to be doing and doesn't do any of the things that people would not want it to be doing and that's obviously I think part of the sacred mission of many of the parties who worked on this case. That operating injunction was negotiated by the Department of Justice, by the ad hoc committee which of course includes a huge number of AGs, by the NCSG which includes all the rest of the AGs getting us up to 48 and the MSG as well. That is now in fully agreed form and is final and was filed as Exhibit C like Carly to the confirmation order, see ins /THAEUFPLT document quite frankly that making sure on a go forward basis everybody can hopefully take comfort from the incredible involvement of governmental entities and of course the UCC as well, who I of course need to mention as the official appointee of the Department of Justice to oversee and assist all unsecured creditors in the case.

Next, your Honor, also filed, I believe yesterday is the final Sackler settlement agreement, which has been a very long time coming, just so that the record is clear, that document was negotiated by the official committee of unsecured creditors appointed by the Department of Justice, by the AHC, by the MDL PEC members who are part of the

ad hoc committee which includes obviously several dozen attorneys general and lastly by the special committee of the board which of course as everybody knows after an examination was like wise found to be fulfilling its fiduciary responsibilities with complete and total independence. So that document is now done as well, it contains very important things, this is a thing deal the Sacklers are paying over time and frankly something that sounds lawyerly and technical, which are the collateral and credit support annual /STPHAOEUFPLT frankly involves some of the most brutal negotiations that actually took months because all of the fiduciaries on our side of the V who represent the plaintiffs in the case and, you know, frankly the states and the cities and the victims and the like, need tone sure that the Sacklers are going to pay and obviously credit and collateral and covenants and promises and oversight rights and the like are critical to that and those have I believe been negotiated to a place we can live with. As the court has heard me say many times, this is not a perfect deal, we would have liked more and earlier, but this is the deal that everybody was ultimately willing to agree to under very, very complex circumstances.

Finally, your Honor, it goes without saying, I believe we incorporated everything the court said, one of the things that the court will see is paragraph 7A of the proposed confirmation order now further clarifies that no material or substantive changes can be made to the settlement agreement essentially and it's not, this is the deal, the deal is done, there will not be any further material certainly concessions to the defendants in this case. Subsequent to the order being entered and the documents having gone final. Number four, your Honor, there was a filing we had a little bit candidly by the U.S. trustee yesterday, they called us yesterday and raised a question about language in our proposed confirmation order that we believed

could be read ambiguously as somehow being, I think the theory was a ruling by this court that this and other courts can't grant future stays, we didn't remotely read it that way, and certainly was nobody's intend /STPHAOEUFPLT dozen of confirmation orders, we said absolutely, let's clarify it, we thought they were sending language, they didn't, and instead they just filed a pleading on the docket expressing their concern of the ambiguity, I guess that's fine. And we jumped right on it and instantly drafted language that we think makes it clear beyond per venture there's no possible argument since of course this court never would, never could and no one would ever ask it to to issue something about future stays. The point is we took out the rule 3020E waiver of the 14-day stay, so this case does have the 14-day stay under rule 3020E and all the language says is that other than that stay, no other stays are currently in place. Obviously if somebody moves first day and they get a stay, we'll deal with that at the time, we'll be read to ask /STPHAOEUFPLT certainly have strong views. That has been addressed, they did make a point about 1127, I just want to be clear, I think all many fiduciaries in this case are /STRAED /TPHAERL comfortable beyond a shadow of a doubt frankly that the changes to the plan have just made it better and better for the estate. As for example to give the primary example, we are continued to narrow the scope of the releases in draft after draft while getting the same amount of consideration from the defendants. So there's no limitation on the number of times you can amend a plan, the law is very clear, which is you can't adversely effect creditors and stake holders at a juncture like /TH-RBGS the U.S. trustee is not suggesting we have, it almost seems more like a musing to me, but I do want to be very clear, we believe all of the changes in this plan that have happened really since it was originally filed in March and certainly collectively, but even individually have done nothing but improve it further and further and

further for the stake holders for whom many of us serve as fiduciaries.

Obviously they also indicate that they stand on their objection as to both legal fees and the legality of third-party releases, we certainly understand that, nobody else refiled their objection to make sure it's still standing, we understand, we don't pre/STPHAOEUFPLT all objections are resolved, certainly things have been narrowed and many items have been resolved. Finally, your Honor, the last I think good news announcement and I'll alternative to /PHRAOFPLT /#123450EU6789 I believe there is now agreed language to effectuate the court's, in essence ruling on Friday about what the court was and was not willing to do with respect to the DMPs based both on the pleadings and the factual record of the case and so while that's not a settlement, it is simply language that we believe effectuates the court's ruling, I'm hoping that issue is now behind us as well. Your Honor, with all of those updates, I think it's fair to say I should stop talking except to note I think we're down to at the ended a very small number of the core objections about which we heard both extensive trial testimony and argument and so I have no further updates can I announce because it's not where we are, the final, you know, 10 or so objections have been /STPHAOEUFPLT we continue to work with all parties and hope we can come to resolutions, but it's not just not where we are this morning, so unless the court has questions for me, I think that sort of updates the court and all parties on what's been filed, why it was filed, which things are now in the done pile, obviously but for your Honor's comments, it goes without saying, and I would propose to turn my Mike off and is ask Mr. Congratulate to summarize the DMP issue that your Honor gave guidance on and I believe we have nothing to say further from the debtors.

THE COURT: Okay, thank you.

MR. GLEIT: /STPHAOEUFPLT for the debtors.

THE COURT: Good morning.

MR. GLEIT: Good morning. Your Honor, we heard you loud and clear last Friday and over the weekend and beginning of this week, we worked with the DMPs and the AHC to work on language which I'm just going to briefly now put in the record with a brief statement which says, the debtors and the DMPs have agreed that the language insert indeed 10.10B of the 11th plan reflects the courts statements made in connection with the DMPs concerned objection. The parties agreed that the debtors would state on the record, which I'm doing now, section 8.8B of the plan settling co-defendants and lastly a provision was added to the confirmation order which is going to make clear that any MDT insurance settlements going forward are going to be upon notice and according to bankruptcy rule 99E. So unless your Honor has any questions, I think the issue's now resolved, hopefully.

THE COURT: Okay. All right, and Ms. Steege; is that correct, is that language in the plan and the statement that Mr. Gleit just made resolve the remaining objection by the MDP parties or sometimes referred to as the co-defendants.

MS. STEEGE: Yes, your Honor, it does, thank you.

THE COURT: Okay. And I just want to be clear, as I understand it, it leaves open the issues that I said should be left open which includes potentially as a defense whether the rights to coverage under a policy were released under the agreement between the parties. But if in fact those rights are direct and established then as I read the plan it gives the, that party that has that those rights access, they're not enjoined by the insurance injunction.

MS. STEEGE: That's our understanding your Honor, thank you.

THE COURT: Okay, very well, I appreciate the parties work on that.

All right, I think that concludes the first part of this hearing, which really just went to clarify as noted the recent changes to the plan. And updated me on the status of the settlement agreement with the Sackler parties. So I'll give you my bench ruling now on the debtors request for confirmation of the amended joint chapter 11 plan.

It is clear that the wrongful use, including marketing of opioid products has contributed to a massive public health crisis in this country and elsewhere. The role of these debtors and their owners, and this is a closely held set of debtors, to that crisis makes the bankruptcy cases before me highly unusual and complex.

This is so primarily because of the nature of the creditor body. Given the extraordinarily harmful effects of the debtors' primary product, Oxycontin, and other opioids on ordinary people, as well as on the local governments, Indian tribes, hospitals and other first responders, states and territories in the United States, who must address these effects on a daily basis.

In a very real sense, every person in the range of the debtors sale of opioid products is a potential creditor. Bankruptcy cases that present a unique and perhaps the only means to resolve the collective problem presented by an insolvent debtor in a large body of creditors competing for its insufficient assets. Including, especially when dealing with mass claims premised on a harmful product that as is the case here causes massive harms or mass harms. Bankruptcy cases focus the solution away from individual litigation to

a fair collective result subject to the unique ability under the bankruptcy laws to under generally rare defined circumstances bind holdouts who could not otherwise be bound under applicable law.

Over the years, courts and the parties to bankruptcy cases have refined and improved on these solutions. They clearly have been brought to bear here in these cases, involving in all likelihood the largest creditor body ever and I'm not speaking solely of the roughly 614 thousand claims that were filed, although I believe that is a record. But also as I noted before, the people who could arguably be said to be represented by their local governments and their state governments as well as by the United States.

Here to the parties have worked in unique and trail blazing ways to address the public health controversy that underlice those claims /STPHAOEUFPLT because the debtors assets include enormous claims against their controlling shareholders and in some instances directors and officers who are members of the Sackler family.

Whose aggregate net worth no greater than the debtors also may well be insufficient to satisfy such claims and other very closely related claims against them that are asserted by third parties who also are creditors of the debtors, that is have claims against the debtors.

The questions then are how can such claims be resolved to best effect for the claimants and is such resolution authorized under the Bankruptcy Code and law.

The primary questions for me in this case focusing on the chapter 11 plan that is before the court for confirmation is can these issues be resolved by the court by approval of the plan and should they? It is clear to me after a lengthy trial that there is now no

other reasonably conceivable means to achieve this result. I believe it is also clear under well established precedent that with a sufficient factual record, Congress and the Bankruptcy Code and the courts interpreting it provide the authority for such a resolution. That leaves the question, should this resolution be implemented. This ruling explains that my findings and conclusions with respect to all of those issues informed by the record of these cases, the parties votes on the plan, the parties' briefing and the record of a 6-day trial involving 41 witnesses and a courtroom full of exhibits and two full days of oral argument.

I will note before I proceed that I am giving this ruling as an oral bench ruling as opposed to writing a written opinion because I believe it is of critical importance that the parties to these cases learn the result of my analysis as promptly as practicable.

As I often do with lengthy bench rulings, I will go over the transcript of my ruling and if I feel that I have said something inartfully or left something out that I should have said and of course in addition to correcting any typos or missed citations or citations in improper form, I will modify my bench ruling and file it as a modified bench ruling, not obviously as a transcript.

But again as with any case of this size, and particularly given this case, where the parties I think universally have made it clear and I fully understand them, that it is important to devote the debtors resources as soon as possible to paying victims claims and otherwise abating the opioid crisis. That there should not be any further delay in my delivering this ruling.

The notice of the debtors

request for confirmation of the plan was set forth by jeans fin began in her declaration and testimony primarily her third declaration, but also referred to prior declarations she had provided with respect to the noticing of claimants and potential claimants in these cases. It is clear from her testimony that the notice of A, these cases, B, right to assert a claim against /THAOETSors, C, the request for confirmation of the plan, and D, the proposed broad release of third parties claims against the released parties in the plan, which is primarily of the Sacklers and their related entities, was unprecedentedly broad. With only one caveat, Ms. Finnegan's testimony was undisputed that the debtors noticing program as implemented under Ms. Finnegan's supervision reached roughly 98 percent of the population in the United States. And only marginally smaller number or percentage of the population in Canada and also was extensive throughout the world where the debtors own products might have caused harm. The program was carefully tailored to each known creditors but also to reach the population at large, including through various types of media aimed at people who may have been harmed by the debtors products.

Ms. Finnegan's calculations reflect literally billions of hits on the social media and internet notices, as well as of course reliable studies of the reach of the other means of notice.

The caveat that I would have is that the notice to those in prison was in part effective, I believe, in providing notices to prisons and to groups working with or known to work with people who are in prison and suffering from opioid use I disorder or other adverse effects of opoids. But Social Security certainly within my

contemplation that given prison regulations and lack of access to TV, radio and other media. Prisoners may not have gotten the same high level and I'm talking again about approximately 98 percent of the entire U.S. population, of notice of the case the party, the confirmation request and releases in the plan. On the other hand, the debtors and the plan including the personal injury trust procedures have made it clear that they are flexible with regard to late claims against the personal injury trust and the assertion of evidence to the trust by prisoners in light of prisoners unique circumstances.

United States trustee also suggested that referencing to the plan in the notice would have sent a party to a lengthy and complex set of release provisions. This is true and it clearly does take a lawyer to parse through those provisions and even then as reflected by the record of the parties responses to my comments, those provisions were subject to some potential for differing interpretation, although I believe that is not the case now that they have been narrowed.

However, the notice that was most widespread was a very simple one that made it quite clear that the plan contemplated a broad civil release of the debtors shareholders, the Sacklers, and their related entities.

In addition, the extensive media coverage of this case also made that point crystal clear. And it is that aspect of the release, rather than parsing through it, that is the basis for the objections that have been filed and therefore that could have been filed, i.e., that it is too broad and not authorized under applicable law. Which I believe was pervasively spread throughout the country and in Canada.

So I conclude that the debtors notice of the confirmation hearing and the proposed releases in the plan was sufficient and again unprecedentedly broad.

Next I should note the vote on the plan by the classes entitled to vote. It is important to address this issue up front because if a plan is not accepted by an impaired class in its vote, the plan proponent must proceed under the so called cram down provision of the Bankruptcy Code section 1129B. On the other hand, if all of the impaired classes have voted in favor of confirmation of the plan, the court analyzes only section 1129A's requirements for confirmation. And the imported provisions of the Bankruptcy Code relate today it such as section 1122 and 1123 of the code.

Based on the ballot declaration and testimony of Christine paw low, this plan received, I believe, also an unprecedented number of votes cast. And of the votes cast, the plan that was in fact accepted by every voting class thus obviating the need to proceed with the cram down provisions of the Bankruptcy Code.

In addition, and significantly, each voting class voted overwhelmingly in favor of confirmation of the plan. On average, the vote was over 95 percent in favor of confirmation of the plan.

That too is a remarkable result given the very large number of people who got notice who are entitled to vote, and who actually voted. And the unprecedented large number applies to each of those categories.

On the personal injury claim side, the vote was roughly 97 percent. In all cases it was above 95 percent, except with regard to the hospital class which was just under 90 percent.

Which however -- no member of

which however has objected or has entered an objection to the plan.

I will address separately two objections that alleged that the vote should be looked at differently, first that the plan improperly classified certain claims with other claims and that if they had been classified differently in a separate class, the vote would not have been as overwhelming, although it's acknowledged by those objectors that it would still have been over 75 percent as far as the supermajority voting in the class, which is that figure that Congress provided for in section 524G of the Bankruptcy Code when setting a higher bar for the release or channelling of third-party claims in cases where the claims are asbestos liability related.

Again I will address those classification points separately. In addition, and frankly baffling to me, the United States trustee has argued that I shouldn't just look at the votes cast, but at the votes that were not cast in determining whether the plan was overwhelmingly accepted. That of course is not how elections are conducted. There is no conceivable way to determine the preferences of those who didn't vote other than that they didn't object and they took no position in a no vote.

But where a vote is as extensive as this with hundred -- well over a hundred thousand people voting, under any measure, this plan has been overwhelmingly accepted.

And of course it is the vote that counts under section 1126 of the Bankruptcy Code and in every election. Not a statement by a bureaucrat or his or her sense of where the wind is blowing, that's why we have elections.

A plant proponent has the burden of proof on all elements of section 1129A that must be

satisfied for a plan to be confirmed that burden of proof of satisfied by a showing that the applicable provision has been met by a preponderance of the evidence in redie tech holding code /STPHAOEUFPLT bankruptcy SDNY2019 and the cases cited therein.

Many of the provisions of section 1129A that are applicable to this plan are uncontested. And based on my review of the relevant witness declarations, including the declaration of John L-O-W-N-E, first name J-O-N, John do bell and Jesse Delconte, I conclude that the uncontested -- that with respect to the uncontested provisions of section 1129A, the debtors have carried their burden of proof.

The provisions of section 1129A that have been contested by the remaining objections are section 1129A1 which states that the plan must comply with the applicable provisions of this title, i.e., the Bankruptcy Code. Which incorporate -- which incorporates for purposes of the objections that were filed sections 1122 and 1123A4 of the Bankruptcy Code.

In addition, certain object /*PBTs have intended that the debtors have not satisfied their burden to show under section 1129A3 that the plan has been proposed in good faith and not by any means forbidden by law.

The United States trustee has objected that the payment of certain fees, that is legal fees and expenses under paragraph 5.8 of the plan violates section 1129A4 of the code, which states that it is a requirement for confirmation that any payment made be /STPHAOEUFPLT by a debtor or person issuing securities or acquiring property under the plan for services or cost of expenses in or in connection with the case or in connection with the plan and incident to the case has been approved by or is subject

to the approval of the court as reasonable.

Certain objectors have also contended that the plan has not satisfied the so called best interests test of section 1129A7 of the Bankruptcy Code, which requires a showing that with respect to each impaired class of claims or interest, each holder of a claim or interest of such class has accepted the plan or that is for those who have not accepted the plan will receive or retain under the plan on account of such claim or interest property of a value as of the effective date of the plan that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

The objectors though have raised this provision contend that because their third-party claims against the released parties, the shareholder released parties are being channelled to the plan trust or otherwise precluded because of the distribution that they would be receiving under the plan or as they would not be in a chapter 7 liquidation, the plan fails the so called best interest test comparing that liquidation recovery to the recovery under the plan.

Finally, there has been a suggestion, although of the faintest kind that the plan does not satisfy section 1129A11 of the plan, the so called feasibility test, which states that confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan unless such liquidation or reorganization is proposed in the plan.

I will address each of those individual objections shortly.

Although I can find at this point that the plan does satisfy

the so called feasibility test under section 1129A11 as set forth in the uncontested fact declaration of Mr. Delconte showing projections and the assignability of the debtors insurance. The only, and I say this again nebulous objection of this point was by the holders of certain claims asserted by certain Canadian /PHAOU anies palates and first nations which contended, albeit I think only at oral arguments that the treatment of those creditors under the plan would be sufficiently disagreeable to the Canadian court presiding over the ancillary CCAA proceeding in Canada when the debtors request recognition of the plan.

First based on my understanding of the model law on cross border in/SOL van Is which forms the basis of chapter 15 of the Bankruptcy Code, as well as the CCAA provisions providing for recognition, I am reasonably comfort /THABL the Canadian court will recognize the plan, although that is a decision for the Canadian court.

And not view the plan as unduly discriminatory against Canadian debtors in light of what they would reasonably recover from the debtors if this plan were not confirmed and the different nature of the regulatory regime that covers the Canadian creditors. Then their U.S. counter parts, i.e., Native American tribes and municipalities in the U.S. It is also my belief that the public policy exception to recognition under the model law acourse bored insolvencies would not be applied by the Canadian court given the narrow nature of that public policy exception. Although again of course that decision is one to be made by the Canadian court. Further, it appears to me again paved upon Mr. Delconte's declaration that while recognition is important and would bring

clarity and finality to the claims of Canadian creditors against these debtors, the absence of recognition is not critical to the survival of NewCo under the plan.

And therefore that in any event, the feasibility test would be met. I will note further that the plan makes it clear that with respect to any Canadian creditor that has a claim against Purdue Canada, which is not a debtor here, or a claim against any of the shareholder released parties that is unrelated to a claim against the debtors here, i.e., for example, a claim against them because of their rule in Purdue Canada, those rights are expressly preserved under the plan.

Most of the objections to confirmation of the plan are based on the object ants con/STPHAOEUFPLT settlements provided for in the plan either are not warranted under applicable bankruptcy law or are beyond the court's power even if awarded under the bankruptcy law to approve and propose. Before addressing those issues, however, I will address the other remaining objections to the plan's confirmation.

The first set of objections that I will address have been raised by certain insurers navigating specialty insurance company, American guarantee liability insurance company, stead fast insurers enjoined in by national union insurance company, I will note that another insurer objection made by the Chubb Insurance U.S.A. group has been withdrawn.

The debtors seek certain findings in the confirmation order regarding the effectiveness of the transfer of a debtors insurance or insurance rights to the trust established under the plan to fund and make distributions to creditors. They also seek findings regarding plans settlement of

opioid claims namely that the treatment of opioid claims under the plan or insured claims under the plan or arguably insured claims under the plan, does not have the effect of comparing any applicable insurance coverage as a bona fide fair settlement on the due notice to objecting insurers, as well as the other insurers who did not object. The plan does not seek extensive findings as to the debtors insurance, it for example does not seek a declaration that any insurance coverage or insurance rights actually apply, that is the subject of a separate litigation that will take its own course, rather the findings that the debtors seek are integral simply to the effectation of the transfer and transfer of insurance rights to the trust from the debtors and to obviate a defense that the plan itself in providing for a means to pay opioid related claims somehow /TKER gates the insurers rights to review and consent to the payment of an insured claim. The objectors contend that the plan and confirmation order should be quote insurance neutral, i.e., postponed for another of the day, the need for even these findings. There is no such concept or requirement that a plan be insurance neutral and where a plan provides for as an element of the plan the transfer ever a debtors insurance or insurance rights to a trust, the issue has been joined in the confirmation hearing and the court is properly situated to decide it.

This is in contrast to again general coverage issues, i.e., whether any particular claim against the insurance is excluded because of a coverage exclusion, which is not an element that the plan requested a determination of or hinges upon and/or the plan is clear in the reservation of rights by the insurance, by the trustees of the trust that will hold the

insurance and insurance rights on the one hand and the insurers on the other.

The insurance neutral argument that the objecting insurance companies make therefore is not grounded on an underlying principle of bankruptcy law, but rather only on a due process concern they contend that as originally filed the plan was arguably completely insurance neutral and did not seek these types of determinations.

However, I believe that the record is clear that the objecting insurers and all other insurers have had sufficient notice for months now that the debtors were going to seek these limited findings in the confirmation order.

The insurers are extremely well represented, highly sophisticated as evidenced by the negotiations over the plan provisions relating to them and the proposed confirmation order and they had a full opportunity to challenge the findings that I just outlined that are being sought by the debtors and their allies, the parties that is who would receive the benefits of the insurance under the plan. Mainly the creditors.

That notice is really been made to them at least since May of 2021. And for the statutory and bankruptcy rules notice period for the confirmation hearing as well.

The plan also resolves the remaining issue that raised as originally drafted, it left over the possibility that additional findings could be sought or documents could be filed that the insurers would not have notice of and that might nevertheless be binding on them, the plan has been amended to make it clear that is not going to happen.

As far as the finding as to the plans resolution of arguably insured claims by providing for the distribution of 100 percent of the

value of the debtors on account of the claims asserted against them in the form of payments between 700 and 750 million to personal injury trusts and remaining amounts of at least 5 billion to abate the opioid crisis in various forms.

It is almost impossible to see how, in fact I believe impossible to see how an insurer could claim that its consent rights were somehow violated by notice of the plan and the implementation of it.

As far as the filed claims are concerned, the claims assert roughly $40 trillion excluding a sole hundred trillion dollar claim that was filed by an individual, and that is only roughly 10 percent of the claims, the others asserting unliquidated amounts or unasserted amounts as set forth in the declaration of Jessica B Horowitz, Ph.D., which was an expert declaration. She calculated that the actual fixed claim of the Department of Justice under the settlement agreement entered into by the debtors during the course of this case provides for less than a 1 percent recovery on the asserted claim. Your Honor the circumstances given the wide notice and the absence of any objection to the plans, the allocation of value, either to opioid victims or to abate the opioid crisis and the fact that insurers consent rights just like any other contract parties consent rights are circumscribed by the bankruptcy codes own separate hearing and process.

The debtors request for finding as to applicable consent provisions is justified and appropriate.

In addition, ample case law establishes the authority under sections 1123A5B and B2 and 6, to transfer as part of a plan and in furtherance of a plan insurance rights and insurance policies to a

trust to pay mass claims as existed in this case.

The analysis set forth by the third circuit in in refederal /STPHAOEUFPLT third 355, there's circuit 2012, I believe cannot be improved on in this context, I will note that although that was a case driven by asbestos claims, the logic behind the court's analysis was based on section 1123A5 and 1141, not section 524G of the code and therefore would apply here. See also in re-WR grace company /STPHAOEUFPLT VR34139 note 189 deed Delaware 2012 a/STPHAOEUFPLT F third 311 third circuit 2015 and the cases cited therein. Which show the vast and I think perhaps unanimous authority for the finding and conclusion that the debtors seek here that notwithstanding any anti assignment provision in any applicable insurance under the plan the insurance policies or the insurance coverage rights or the rights to the proceeds can be assigned to the MDT, the master distribution trust. /STPHAOEUFPLTly also note warranted it appears at this point the insurers who have objected the disclaimed coverage /STPHAOEUFPLT reserving their rights to do so see JP Morgan Securities Inc. V vigilant insurance company 58NY third 38, I'm sorry NYS third 38 first department 2017 in /SKP* the cases cited therein. So I will overrule the remaining portions of the insurers objection to the extent they actually do remain and I will note that in light of the colloquy during oral argument with the insurers counsel and counsel handling insurance issues in this case, Reed Smith, it appeared to me that most if not all of the objections actually had been resolved by the changes to the plan that I've already described.

The next objection I want to address is an objection by the United States trustee not to the

planned settlement and release provisions pertaining to the shareholder release theed parties, the Sacklers and related entities. But rather a separate objection, which is to section 5.8 of the plan. The plan provides for compensation of defined term professionals which are a state retained professionals or professionals such as counsel for the official committee of unsecured creditors who are retained per /SAOUPBT to an order of the /STPHAOEUFPLT post petition, that is post bankruptcy filing work.

Two other groups of professionals are also covered by orders of the court previously entered in the case and will continue to be so with respect to their fees through the effective date or the confirmation date of the plan under those orders. Mainly the AHC and the multi state governmental entities group. Section 5.8 of the plan sets forth the treatment of fee claims for other counsel, not counsel formally retained by and whose retention was approved by an order off the court or /STPHAOEUFPLT of the court even if retained separately.

That section lays out the settlement regarding the payment of these counsel. Namely funds from the so called no act and tribal abatement fund trusts for political subdivision and tribes counsel. In addition, it lays out payment of attorneys involved in the pursuit by hospitals of their claims, called NAS monitoring claimant costs that is the counsel for NAS victims for the payment costs and expenses, payments for personal injury costs and expenses, payment for the public schools costs and expenses.

The U.S. trustee contends that the only way the plan could provide for such payments is pursuant to section 503B304 of the Bankruptcy Code. Which provides

that after notice in the hearing there should be allowed administrative expenses, that is expenses against the estate for post petition claims including the actual necessary expenses comprising reasonable compensation for professional services rendered by an attorney or account of an entity whose expense is allowable under sub paragraph A, B, C, he D or E of paragraph 3 based on the time, the nature and the extent of value of such services and the cost of comparable services under the case of this title and reimbursement of actual necessarily expenses /KOEURD by this account. That section takes you back to to section 503B3, which requires that a creditor show that it made a quote substantial contribution in a case under chapter 11 of the Bankruptcy Code.

This contention by the U.S. trustee is wrong in two critical respects. First, the bulk of the fees that it is objecting to are not for post petition work. But rather for prepetition work in bringing and pursuing claims against Purdue and to some extent the Sacklers before the commencement of the bankruptcy case, including in the multi district litigation that was pending before the start of the case.

Unsecured creditors claims for collection of costs, including attorneys fees, are based in contract ultimately as well as rights under applicable nonbankruptcy law and enforceable in bankruptcy, without the necessity to comply with section 503B3 and 4 which applies only to post petition services or services leading up to a plan if one seeks an administrative expense. See in re: United mergers and manufacturers Inc., 134138 second circuit 1982.

The U.S. trustee is wrong on

this point also because the remaining fees to be sought again are not being sought as an administrative expense but rather as a part of a highly negotiated compromise of those fees and client's obligation to pay those fees reached during the mediation in this case conducted by Messrs. Feinberg and Phillips. The settlements laid out in section 5.8 that resulted from that mediation are subject to court review, both under bankruptcy rule 919 and I believe, although there are arguments to the contrary, under section 1129A4 of the Bankruptcy Code, which I previously read and have been so recognized in this district. See in resterns holding LLC, 681 /STPHAOEUFPLT bankruptcy SDNY2019 and in resubpoena order oil and gas Corp., 55 /STPHAOEUFPLT 258 bankruptcy SDNY2016.

The U.S. trustee relies upon a case that is imminently distinguishable /STPHAOEUFPLT SDNY2014, in that case, district court noted that Congress had specifically precluded recoveries by creditor committee members ever their post bankruptcy fees and expenses. Therefore, any settlement of those expenses would be improper as controverted by that provision see in contrast in re-AMR Corp. /STPHAOEUFPLT 690695 bankruptcy SDNY2013.

The mediators report has made it clear and there is unrefuted testimony in the record in addition to the mediators report on the docket by Mr. Gary L got tow, Peter Weinberger and Jane conRoy as to the, not only the reasonableness of the contingency fees provided for in section 5.8, again almost all of which were prepetition or for services rendered prepetition, but also the significant compromise of those fees as set forth in section 5.8 and from a range of 24 percent to the ranges set forth in the, in section 5.8. As stated in the

mediators report, the contingency fee resolutions as well as the common benefit assessments reached in this mediation are consistent with fee awards, arrangements and assessments agreed upon in other similar mass tort situations. See also the deck Lars of AG guard paragraphs 67 through /STPHAOEUFPLT 77 and 78, the Weinberg declarations in paragraphs 23 and 31 through 32, and the Conroy declaration at 11 and 15.

I do believe given Congress's concern that the court be the ultimate say on the reasonableness of the attorneys fees paid through a chapter 11 plan, albeit that here they're not being paid by the debtors, but rather they're being paid by the clients and the trusts that the clients agreed to set up, as part of the client's recovery, Congress did that however with section 1129A4, not 503B and 4, which requires only that the fees be found to be reasonable.

That inquiry should not be turned into a mandate for an expensive or unnecessary review in rejournal registry company 537 through 38, bankruptcy SDNY2009 quoted /STPHAOEUFPLT south earn electric power company KG electric power could op sing 5035175th circuit 1998. Based upon the uncontested representations, and I note that the /UFT U.S. trustee has made absolutely no effort whatsoever to contest them, but nevertheless somehow contended that the fees were improper. In the guard conroadway Weinberger declarations and the mediators report I find that the contingency fees provided for in the plan paragraph 5.08 and the mechanism for allocating them among counsel are reasonable. And in fact to the benefit of the state by a reduction of the attorneys claims. Sometimes being a watch dog that has no regulatory power requires backing off when the facts show that a

provision is reasonable and for the benefit of the estate, not its detriment. This is one of those instances.

There are two sets I fees that I cannot on this record make a reasonableness finding on, I noted them during oral argument on this issue, they are fees that are based on not contingencies that the parties have analyzed /STPHAOEUFPLT that is the parties have analyzed and mediators have analyzed /STPHAOEUFPLT and on hourly rates, I have not seen any time records to the amount of time spent or the rates and so I believe I need to make a reasonableness finding as to those counsel. Which are the counsel to the TI ad hoc committee and the school districts committee. The plan has been amended to reflect that opinion that I voiced during oral argument with one wrinkle, it contemplated or it reflects that one portion of the school district's claim may actually be a contingency fee claim.

It suggests that the court will not review it if it is determined by one of the mediators, Mr. Feinberg to be reasonable. I'm not prepared to accept that mechanism, I will certainly take into account as I have with regard to the other contingency fee compromises that are set forth in paragraph 5.8, Mr. Feinberg's views but I believe I ultimately had to make the reasonableness determination on notice to parties and interest including the U.S. trustee.

I recognize this is a compromise or the contingency fee amount is a compromise, but given that I don't have evidence in this record to show that it was a reasonable compromise, I need to under section 1129A4 have the last say on it. But fob clear, this is an exercise I /STPHAOEUFPLT on my review of the contingency fee take

intoing account the evidence presented before me which I anticipate will be some statement by Mr. Feinberg in any other statement that would support that level of contingency fee. So the U.S. trustees objection on this point is overruled. And just to be clear because insinuations really shouldn't go unanswered, there is absolutely no evidence for any insinuation in the U.S. trustees filings that the fees provided for in paragraph 5.8 are somehow improper, in fact to the contrary, they are settlements of claims that could be substantially higher and were settled as part of the mediation resolving the allocation of claims between public and private creditors and the amount creditors were willing to accept coming from the Sacklers. The record is crystal clear on that.

Again, the settlements are to the benefit of the creditors, not their detriment.

The next objections are by individuals clay ton Boyd, Stacy bridges and Charles Fitch in their individual capacities. They object contending that there was insufficient notice of the bar date to those incarcerated in prison, notwithstanding as I noted before or earlier the extensive notice that's testified to by /STPHAOEUFPLT.

There is a fundamental problem with this objection, all three of the objectors have actually filed a proof of claim timely, i.e. before the bar date. They therefore lack standing on article three of the constitution and this court lacks the power to decide their objection because as to them and again their proceeding in their individual capacity, there is no remedy that the court can grant. Again they have filed a timely proof of claim in this case. As recently stated by the court and /STPHAOEUFPLT Ramirez 2202 through

2203 from this year 2021 but to have standing and whether there be a case in controversy, the party raising a matter with the federal court must have a personal stake in fact. And if they don't, there is no case or controversy. Which includes determination of the objection under article three of the constitution. See also cane V. Johns manville Corp. /STPHAOEUFPLT 642 through 646 second circuit 1988 which dealt with almost the same issue. Mr. Boyd also filed a second individual objection based on what he believes might be the consequences of the debtors criminal plea in their 2021 settlement with the Department of Justice. Mr. Boyd's counsel acknowledged at argument that this issue was properly raised not here, but at the debtors sentencing before the New Jersey district court. In which it can be argued that persons such as Mr. Boyd might have an individual right to the proceeds to be paid by the debtors under the DOJ settlements. Even if that wasn't conceded, I rule that that issue is not a plan confirmation issue, but rather an issue as to the allocation. But rather an issue of the payment after the DOJ makes it. I don't believe it effects the feasibility of the plan. More over, it's based on my review of the discorrection that the district court would have under the applicable act that Mr. Boyd is going to rely on where there is such a large number of potential victims for which the DOJ could be said to be acting. The individual rights of the restitution fund can be foregone.

There is arguably a suggestion by Mr. Boyd that the debtors and the Department of Justice colluded in agreeing to the settlement agreement and therefore in that they did not provide individual rights of restitution from the payments or the rights of

the DOJ under the settlement agreement.

This is not supported by the record. The debtors have established that as far as the plans treatment of the Department of Justice, the plan has been proposed in good faith under section 1129A3, there's no evidence of any attempt to improperly cut off rights that individual victims would have under the DOJ settlement. And indeed the personal injury class was actively and well represented in the mediations in this case, which came up with the funding of the personal injury trusts. It's well established in the second circuit, including in the Drexel case I'll be citing in a moment that the fact that some creditors did not participate in a mediation that does not render the results of a mediation improper or not in good faith. The /TEPBGTS of the vote of the personal injury class, 97 percent in favor of the plan also argues for the good faith treatment of the personal injury creditors here, vis-Ôø Ω-vis the DOJ settlement. And again I've noted the flexibility in the settlement and the applicable statute that would govern restitution rights, which of course the district court in New Jersey will consider at the appropriate time.

So I will overrule Mr. Boyd's second objection to the plan. I had mentioned earlier that certain Canadian municipalities and first nation /STPHAOEUFPLT I approved the proofs of claim they had filed in these cases against these debtors, it is not clear from those claims which essentially attach complaints against both nondebtor Purdue Canada and other non-debtors and these debtors, whether the claims really are against the debtors. To the extent against Purdue Canada and other foreign non-debtors, those recoveries are fully

preserved, they're not effected by the plan and claims against third parties including the Sacklers related to those types of claims as opposed to claims against these debtors are not enjoined. The gist of the objection is that rather than be treated as general unsecured creditors in class 11, Canadian municipalities and first nation, /STPHAOEUFPLT must be classified with /STPHAOEUFPLT and classes four and 5 respectively and participate in the abatement trusts created under the plan for those creditors. It should be noted that these objectors have made no contention that the value to them to be paid to them as a class 11 creditor is unfairly different than the value to them if they participated in the no act Native American tribes abatement trust.

But in any event, it is conceded by these objectors that if their vote were count indeed class 11 as opposed to in classes 4 and 5, class 11 would still have overwhelmingly accepted the plan, thus the revision in section 1129B cram down requirement that there be no unfair discrimination among similarly situated creditors in different classes does not apply. Instead, the objection is if at all properly couched under different provisions of the Bankruptcy Code. I will note that there is some suggestion during oral argument and one sentence in the objection that stated that claims and municipalities of first nations should not be allowed for voting purposes at $1 as provided for in the court's confirmation/disclosure statement order.

However there's been no request for /STPHAOEUFPLT for claims under section 502C of the Bankruptcy Code for rule 4018 and further /STPHAOEUFPLT temporary allowance for what would otherwise be a disputed and unliquidated claim, arguably not even against

these debtors for mass tort liability is well recognized as being fair. I see the discussion in in re-Lloyd, that's L-L-O-Y-D-E, Mitchell Inc., 37B3R416428 given the vast number of claims asserted that are unliquidated like these and subject to dispute to subject the process to fixing the amounts of such claims would defeat the whole conduct of the bankruptcy case.

Given section 1129B doesn't apply to the issue of the class vote, the issue is whether the plan separate classification of these objecting creditors in class 11 as opposed to the class that they want to be in is proper.

Separate classification of similar claims is a right that a plan proponent has under the Bankruptcy Code if there's a reasonable basis to classify the claims separately, see generosity /STPHAOEUFPLT bankruptcy paragraph 1122.03 (1) (C) edition 2021. In relight squared Inc. 513 /STPHAOEUFPLT bankruptcy SDNY2014 and in re/STPHAOEUFPLT lamb better ink 32 /STPHAOEUFPLT 1992.

Section 1122 of the Bankruptcy Code, which again is incorporated into section 1129A1 states merely that notwithstanding any otherwise applicable nonbankruptcy law a plan shall, I'm sorry, I'm focusing on section 11 /STPHAOEUFPLT and section 1122 of this title, classes of claims section 1122 except as provided in subsection B applicable here a plan may Mrs. A claim, in a particular class only as such claim or interest is substantially similar to other claims or interest in such class. It doesn't require all substantially similar claims to be placed in the same class, only that if you are putting claims in a class they need to be substantially similar.

Here there is a basis for separately classifying these

objectors claims from the U.S. from the U.S. and Native American tribes. Based upon the different regulatory regimes that the objectors operate under with regard to opioids and abatement as well as the fact that the allocation mediation, which I'll be discussing at length later, which allocated the debtors assets and third-party claim assets among private and public claimants and then separately among the public claimants, involved U.S. public claimants and their own regulatory interests and futures. The record reflects that there was no request by any of the objecting creditors to participate in that mediation. The record is also clear and I can take judicial notice of the fact as well that those who did request to participate in the mediation if they had a reasonable basis to do so were generally invited into the mediation, including for example the NAACP. The failure to participate in mediation is not something that should detract from the settlement reached, as long as classifications is fair and rationale, in /STPHAOEUFPLT pea body energy Corp. 933, such a distinction between U.S. and Canadian claimants has been recognized by the third circuit. And the 6th circuit. See the class 5 divided claimants versus /STPHAOEUFPLT downing Corp. 280F3 of 2012, WR grace and company, 3112013 where Canadian property damage claims, including a claim by the queen on behalf of Canada was found to be properly and separately classified because of the different types of recovery, such claims would be under applicable law close analogy to the different regulatory schemes that would apply here to the no act trust again there was a suggestion that the separate classification was also not in good faith, basically the same argument that the Canadian /PHAOUPB

/STPHAOEUFPLT didn't have the same treatment and classification as the U.S. Governmental entities and Native American tribes, the plan was not in good faith or proposed in good faith, but given the plans rational basis for separate classification.

Of a lack of any evidence to show that the objecting creditors were improperly silenced or excluded from negotiations, I find that the plan is proposed in good faith as to that.

Besides raising the foregoing objections, the Canadian creditors object to the plans release of third-party claims against the Sackler shareholder release parties. To the extent they make the same arguments as others do to raise this point, I will address them collectively later. In addition, however, the Canadian objectors have contended that because no money from the shareholders settlement is being specifically channelled to class 11, class 11 creditors should not be enjoined under the plan from pursuing whatever claims they have against the Sacklers for the Sackler release parties based on their U.S. conduct, is this a valid basis for a plan objection. Here I conclude that it is. And as released by the Canadian creditors, the uncontested best interest liquidation analysis in the Delconte declaration shows class 11 creditors will receive no recovery on their claims if as I believe is the case upon their carveout from the third-party release provisions. The debtors would liquidate. The Sackler settlement in other words class 11 recovery to exist. It is necessary for and tied to the plan. And fair to the Canadian objectors therefore to bind them to the lease provisions of the plan. I will note in this regard that there's been no indication that /ET Sam remembers would be reliable to

them. Based on their conduct related to the U.S. debtors. Indeed, this note of there's really any indication that there's any claim against the U.S. debtors in the first place.

It is clear to me from the liquidation analysis in the record of this case, therefore, that the payment to the class of unsecured creditors, that is class 11 in which these objectors reside is fair taking into account not only their rights against the debtors, but also whatever rights they may have against the Sacklers that would be released under the plan. And in fact that they would not recover if they were carved out from the release. So I will overrule that objection. To the third-party claims release and injunction in the plan, they have asserted first that the plan violates section 1122 of the Bankruptcy Code by classifying them in class 4 with their political subdivisions. Given that classification if one simply goes by a creditor by creditor in that class, the objecting states and District of Columbia have a tiny percentage of the no vote compared to an enormous percentage from the yes vote and /STPHAOEUFPLT by representing their state as a whole, that is the people in that state. I do not accept however their blanket characterization that because they are states, the other public creditors political subdivision municipalities and the like that are in their class can be silenced, indeed I accept that for most states that is not the case more importantly, states and political subdivisions that is of course of home rule laws and the like, more importantly, there has been no attempt by the objecting states and the District of Columbia to silence the other members of their class by seeking to disallow their vote or designate their vote

under section 1126 of the Bankruptcy Code. And in any event it is a position taken only as to some political subdivisions claims as being precluded by the parents rights of states as opposed to all of them.

Importantly, the states acknowledge and this was stated on the record by their counsel, their claims have the same rights to the debtors assets as other general unsecured creditors including the political subdivisions that are in their class. That is the states claims are not priority claims, they're not secured claims, they're general unsecured claims.

The law is clear that under those circumstances, the states claims are in fact properly classified under section 1122A as I previously read with the other claims in their class. As noted by the third circuit in in re-WR grace and company, third circuit 2013, to determine whether claims are substantially similar for purposes of section 1122A, the proper focus is on the legal character of the claim as it relates to the assets of the debtor. In re-AOV industries Inc. 7092 /STPHAOEUFPLT 11401150D have /STPHAOEUFPLT see also in retribe union company 84 concluding that the phrase substantially similar reflects quote the legal attributes of the claims, not who holds them. And in requick lie /STPHAOEUFPLT bankruptcy 2007 claims are similar if they have substantially similar rights to the debtors assets. See also in re-Drexel better than and lamb percent group Inc. 1992 and bankruptcy paragraph 11.2.03 brackets three 16th edition 2021.

That is clearly the case here. And therefore the claims can in fact and should in fact properly be classed together which has resulted in the unanimous agreement by all the states, including these objecting states as to the

allocation within the class, among them and the other public creditors that was reached during the lengthy and difficult mediation conducted by Messrs. Phillips and Feinberg.

It also should be noted on ultimately this has little bearing on the classification issue only bearing on the plan release issue that if the plan had separately classified the states, although again that would have unduly complicated the universally agreed public side allocation of value as between the states on the one hand and all the other public entities on the other in class 4, the accepting states, states accepting the plan and the territories would go from 95 percent as far as class 4 is concerned to 80 percent or slightly below 80 percent.

In each case, well above the 75 percent supermajority threshold and the analogous section of the Bankruptcy Code 524G. The objecting states and District of Columbia also have referenced the alleged improprietary of classifying their claims as well as all other opioid related claims, none of which have been liquidated to a dollar amount and most of which never will be liquidated to a dollar amount, none of which at least by the public entities will be because of the plan and the agreement by all of the states in the plan to use the money to abate opoids as opposed to paying them cash. They nevertheless content that their claims should not have been loud for billing purposes at $1.

This objection should be denied for the same reason that I denied the same argument made bit Canadian municipalities and first nations. There's been no effort by any of these objectors to seek to temporarily allow their claims for voting purposes, there's an obvious reason for that, if that request had been made, every entity that

wanted to vote would have made the same request and we would have been engaged in I believe literally years of litigation over liquidating the claims which these entities themselves by their own choice as part of a mediation have agreed needent be done because the money will go to opioid abatement instead of individual treasuries. Under those circumstances, it's perfectly appropriate to allow the claims for rogue purposes of $1, again see in re-Lloyd Mitchell Inc. The same objecting states also argue that they are being treated unequally with the United States which is in large measure carved out of the third-party release in the plan. This however is not a proper objection under section 1124A4 -- I'm sorry, 1123A4, which says that plans shall provide the same treatment for each claim or interest of a particular class unless the holders claim or interest agrees to a less favorable treatment because they're not in the same class, they're in different classes and as I noted earlier, a plan proponent can separately classify similar claims in different classes if there's a rational basis to do so.

There clearly is a rational basis to classify the U.S. differently here, the U.S. has different types of claims, it actually has secured claims which are treated as part of one of the aspects of the plan settlement. And it's unsecured claims are different in particular with respect to the Sacklers. Unlike the claimants in class 4 where the objecting states and District of Columbia are classified, the United States has settled its civil claims with the Sacklers. For a specific payment. So clearly the different rights of the United States and different treatment of the United States which include as another part of the plan settlement, the

waiver of $1.7 billion of its superpriority administrative expense claim which otherwise would be entitled to be paid ahead of any other secured claim and any administrative expense claim under the abatement and NewCo provisions of the plan. Which is for the benefit of class 4 and class 5 and frankly all the creditors of the estate. So those different rights and differenting treatment clearly set forth separate classification without a doubt. Nor is any unfair discrimination argument available under section 1129B /STPHAOEUFPLT provision because the class has accepted the plan and therefore the cram down provisions don't apply. The state of West Virginia has filed a limited objection to the plan. It does not object to any aspect of the plan other than the allocation in class 4 and the no act procedures of its share of the funds to be used in the no act trust to abate the opioid epidemic. It raises this objection in to legal context, first it contents that the plan is not being proposed in good faith because what it contends is the unfair allocation of the no act trust. Under section 1129A3 of the Bankruptcy Code, the court shall confer the plan only if the plan proponent shows if it has been proposed in good faith and not by any means forbidden by law. The courts have /TPAEUPBL general consensus to the meaning of good faith in this provision. All courts recognize a procedural interpretation, that is they look only to the proposal of the plan, not the terms of the plan to see if the proposal itself was in good faith or to the contrary infected with improper conflicts of interest or self-dealing or the like.

See for example /TKPWAR vanity V cook investments northwest SPNWY, 9th circuit 2019 and as the /STPHAOEUFPLT a contrary interpretation has a broader

inquiry in general principles of good faith, not only renders the words has been proposed meaningless, but makes other provisions of section 1129A which are specific and shouldn't be die lieutenanted by a good faith analysis redundant. Diluted. See bankruptcy paragraph 11293A60th edition 2021. In addition to that view however, other courts apply more of a totality of the circumstances analysis beyond the manner in which a plan is proposed and find that a plan is proposed in good faith if there is a reasonable likelihood that a plan will achieve a result consistent with the tad applied under the code, that is the Bankruptcy Code, 2019. Generally second circuit has clearly followed the first line, just focusing on the proposal of the plan, see in reboard of directors of telecom Argentina SA /STPHAOEUFPLT 162174 /KA*EUPB Johns mansville 1998. And in re/KOEBL K-O-B-L-B-E, second circuit 1984. On the other hand, courts in this district have at times followed a more expansive view, more of a totality of the circumstances surrounding the establishment of the plan and the like. Although even there they focus largely on the proposal of the plan and the process of plan development. See in rechem /TAOR Corp. /STPHAOEUFPLT 5610608 bankruptcy SDNY2010. In requickly co-Inc. /STPHAOEUFPLT generosity co-shipping and trading limited, in rebright burn energy partners LP, however courts in this district also have considered whether the plan quote will achieve a result consistent with the standards prescribed under the Bankruptcy Code see in redie tech holding Corp. 606BR and the cases cited therein. And and as recognized by judge /TKPWAEURT in this case, that policies or objective include /STPHAOEUFPLT and maximizing profit /STPHAOEUFPLT giving debtors a

fresh start in life, encouraging debtors misconduct, the expeditious liquidation of distribution of the bankruptcy estate to its creditors in achieving fundamental fairness and justice. Here I have ample testimony by John guard primarily, the representative of the State of Florida that the allocation of the no act was the result of good faith arms length negotiations by the various states during the mediation process. That testimony really is unasailable as to good faith. It is also clear that without those negotiations which were difficult given the nature of the states, not as weight of course but equally reflecting concerns underlying the compromise behind the constitution, you have small states, large states, you have states that have been disproportionately effected by the opioid crisis, etcetera. Without that agreement, the goals of the Bankruptcy Code would actually have been jeopardized, that agreement which in fact the State of Washington recognizes being remarkable. And I to believe is remarkable to get 48 states to agree upon an allocation mechanism for abatement procedures. The failure to do so would have resulted in extensive litigation and arguably a fall back on distributing the value of the debtors estates including their claims against the Sacklers and channelled third-party contributions or payments by the Sackler shareholder released parties. Not to /STPHAOEUFPLT abatement purposes. But rather after extensive litigation cash payments which I believe would be substantially reduced by the extensive litigation to individual states for their general use in their treasuries. In large part.

So I find that the no at allocation was in fact derived in good /PA*EUT by arms length and fair negotiations among the

parties.

That testimony by Mr. Guard is highlighted or the /STPHAOEUFPLT of that testimony is highlighted or was highlighted by the cross examination of West Virginia's expert Dr. Charles Cowan. He acknowledged his prior publications, his publications written prior to his being retained by the state of West Virginia /URBLD the no act of the plan. He recognized in those publications that other methods of allocating money towards abatement could be fair and reasonable as well. And that there was no specific formula for allocating states recoveries to them.

It was clear from Mr. Guard's testimony that the proposal made by Mr. Cowan would not have been agreed to by any state other than West Virginia. It also is clear that that proposal or that methodology would have resulted in peculiar allocations of the no act trust money for abatement. Whereby for example states with substantially smaller populations like Kentucky would get substantially more of the funds than states with large populations like New York or Washington would get a larger recovery than Texas, or West Virginia would get a larger recovery than Virginia, albeit that they're neighboring states.

And /-L ab it that although certain states like Kentucky, like West Virginia are in fact ground zero in the abatement -- I'm sorry, in the opioid crisis. It is a national problem that requires the exercise of extensive resources by every state where population is a legitimate measure as well as the other factors taken into account in the no act allocation.

That allocation does in certain ways respect the rights of smaller states and take into account levels of intensity of harm, however, it also recognizes

that the states report in some ways measures of intensity differently and therefore those measures are not necessarily accurate for example the evidence reflects that different states and their subdivisions report deaths from opioids differently than others.

Or record opioid disorders differently. Given that, I conclude that the treatment of the states in class 4 and through it the, by means of the trust procedures and allocations for the no act, are being treated substantially the same. Pursuant to a overall regime that was negotiated at arms length.

As discussed again by the third circuit in the WR grace and company case that I previously cited, quote although near the code for nextive history precisely defines the standards of equal treatment, the courts interpret the quote same treatment requirement to mean that all claimants in the class must have quote the same opportunity for recovery. See for example in rebright burn energy partners LP, and in re-Dan /TPHA Corp., the WR grace court then goes on to state or to cite in recentury medical center Inc., bankruptcy ED Missouri 1990 which concludes the plan subjects are all members of the same class and same process for plan payment is sufficient to satisfy the requirements of section 1123A4.

Finally as the WR grace court states, what matters then is not that claimants recover the same amount that they have equal opportunity to recover on their claims. That's at 729F third 327. The court goes on to sate state, the courts are also in agreement that section 1123A4 does not require precise equality, /SEPBL /STPHAOEUFPLT inrequickly company Inc. See also in re: M-U-L-T-I-U-T, bankruptcy Illinois 2011. Multiut.

It went on to find that that is the WR grace case found that the consequences of how and when the class members would be paid didn't produce a substantive difference in the /PHRAF's opportunity to recover and were the result of among other things a comprehensive mediation in arms length negotiations.

I conclude the same here with regard to West Virginia's 1129A4 argument. I was not going to conclude the same as to another aspect of its argument, one of the adjustments made for the benefit of states with smaller populations, like West Virginia, in the no act procedures, was a separate fund so called 1 percent fund which all the states other than the small states that would participate in the fund were going to participate in with the exception of California. I did not see sufficient evidence on the record to justify California's being accepted from that contribution obligation if you will to the 1 percent fund. However, California has agreed since the discussion on the record during the confirmation hearing to change its view and to participate in the 1 percent fund. Therefore, the one aspect of West Virginia's objection that I was going to grant has effectively been granted by the agreement of California that I just described.

Mr. Guest made it clear that all of the states recognized the huge impact that the opioid crisis has had on states like West Virginia and had tried to take that into account in negotiating the no act allocation. I to recognize that impact. But I believe that given the arms length nature of the negotiation and the acceptable range of West Virginia's treatment, even within the writings acknowledged by professor Cowan, I conclude that it's objection under section 1129A4 should be denied.

The remaining objections to

the plan, other than the objections based upon plans third-party release and injunction provisions and the planned settlement with the Sacklers and their related entities have been asserted by a number of pro se parties, that is parties who are not represented by counsel.

I will go through these which I believe are properly viewed in roughly 4 different categories. First, Ms. Butler Frank, Ms. Ville /TPHAOUF, V-I-L-N-E-V-U-V-E, Mr. C-O-B-B, and Mr. Wright, have Allstated in one form or another, that the plan should not give the Sackler family quote immunity from criminal charges.

I completely agree, as does the plan. The plan does not provide a release of criminal conduct. That is crystal clear in the plan and always has been.

It is I think understandable that a person who is not a lawyer and looks at this case from afar through one form of the media or other, may have reached a different conclusion. In part that is because either through ignorance or choice, the plan has been described as providing quote immunity to the Sacklers. Immunity suggests clearly immunity from criminal charges.

That's how one generally thinks of the word immunity. It simply does not do that. It couldn't do it. And it doesn't. It's important for those who should now know better whether they are reporters, law professors or members of Congress to be careful how they use their words in this context.

At a minimum, it reflects that they do not understand this case. It also, if they really do know better, is irresponsible and frankly also cruel to those who they mislead.

If anyone that is obtaining a civil release under this plan has engaged in criminal activity either

before or during this case, they are not relieved of the consequences of that. If any prosecutor wants to pursue such a claim against the released parties, they can.

Ms. Graham, Mr. Nor meal, Mr. Boos, I hope I'm pronouncing that right, Ms. Willis, Ms. He canny, Mr. West, and Ms. Per /ERB have all in one form or another contended that it is improper or unfair for the plan to provide only the 700 to $750 million for individual personal injury claimants. While the bulk of the recovery goes to as one of the objectors have stated, wealthy states, hospitals, school districts, rate payors, etcetera.

I have said more than once during this case including to Ms. Ecky who testified during the confirmation hearing that one cannot put a price on a human life, or an injury such as opioid addiction. And yet that's what courts do with respect to personal injuries. They take into account a number of factors which are relevant legally, including potential defenses or dilution of the claim and causation. The amount that courts reach is rarely in terms of dollars sufficient compensation.

That is particularly the case where the wrongdoer is insolvent.

I did not have any specific valuation of personal injury claims in this case. What I do have is a lengthy and difficult arms length mediation led by two of the best mediators not only in the United States, but in the world. Messrs. Feinberg and Phillips. They are, I believe, in no way beholden to any type of claimant here or sympathy tick undulily to /STPHAOEUFPLT type of claimant here. Mr. Feinberg, for example, had the incredibly difficult job of working out by dealing with victims and their families the proper allocation of

the 9/11 fund.

Both of them have dealt with personal injury claims extensively and I believe the reason they do that is because they are as sympathetic if not more so to individual victims as they are to states, hospitals and other entities.

The people representing the personal injury claimants in that mediation were some of the most effective personal injury lawyers again in the world.

And by effective, I include within that category aggressive.

I also have the declaration of Michael Atkinson on behalf /STPHAOEUFPLT which attaches the committee's letter in support of the plan and recognizes the committee's role in balancing the interests of personal injury creditors with the states that also assert claims and strongly supports confirmation of the plan as a balance of those interests.

The plan vote which is approximately 97 percent of the personally class and payroll plan strongly argues that the members of that class support the plan and the fairness, albeit only in this setting, where one allocates money from a limited pot base not on a nonlegal view to the valve a human life or a person's health, but based upon the likelihood of such claims recovering in a contested setting and a, I believe, successful resolution of that under the plan that provides for early moneys out to personal injury creditors, the head of the states and fair procedures that make it relatively easy though preserving the burden of proof to obtain a recovery.

The next set of objections were raised by Ms. /PH*BG who also was a witness at confirmation and Ms. V-O-M-S-A-A-L, both of these people had very legitimate concerns as do all of the objectors.

Although as I said before, I believe the first group of objectors have been misled and to think the plan provides for release of any criminal conduct. May have Ms. Mcguy hey and Ms. Vomsaal questioned why NewCo under the plan will continue to sell opoids in any form. Ms. /PH*BG also recommends certain measures that could be viewed as abatement measures such as different disclosures regarding long term opoids or the banning of long term opioids. Changes in packaging and the like.

I believe strongly that every constituency in this case that is had a say on this issue has wanted to ensure that the lawful production and sale of this dangerous product be not only lawful but conducted in a way that is cautious, subject to layers of oversight and informed by the public interest at every step. That is the purpose of the provisions of the plan dealing with NewCo. The NewCo governance covenants, the NewCo monitor, the NewCo operating agreement and the NewCo operating injunction.

All of these things from the start of this case were a primary focus of the official unsecured creditors committee Wes /KPROESed of victims only, there are no financial creditors in this case, the committee consists entirely of victims. They have also been a focus since the start of this case of all states and political subtuitions and I believe soon after the start of this case like the other institutional creditors like hospitals. The debtors have not, since before the start of this case, have the Sacklers play any role whatsoever in their management and so the debtors too have been focused and volunteered at the start of this case an injunction pertaining to their sale legally of these products.

Those measures are described

in Mr. /HRO*UPB's declaration, /SWALS the fact declaration of Mr. Delconte, they also discussed it in the Michael /STPHAOEUFPLT and the attached letter from the creditors committee and they're reflected again in the provisions of the plan that I just described.

The Bankruptcy Code does not require this, but in keeping with the broad determination of the 1129A3 good faith requirement, the parties and interest in this case have required it and I have encouraged them to do so. So that at this point I believe that the measure that is I have just described will set a standard not only for this company, but for other companies that manufacturer and distribute these products which are legal yet dangerous with these well thought out provisions. It is hard to imagine how any other company engaged in this business or in the distribution of these products wouldn't also believe that it was not only the right thing to do, but also in their interest to imitate them. They're not being posed by a government, they're being imposed by this plan. With the input of state government and federal government, and again not only should serve as a model, but a warning to similar companies to take extra care than is required by the FDA or Congress or state law or be held up against this model in the future and be found lacking if they did not at least take the level of care set forth in this model of governance.

The abatement programs themselves are the subject of substantial again unrebuted testimony including by /STPHAOEUFPLT G-O-W-R-I-S-A-N-K-R-I-N, Maureen -- I'm sorry, I apologize, I used the wrong person there. Raul Gupta, Dr. Gupta, as well as as far as the distribution procedures and abatement activities /STPHAOEUFPLT

and Gail /TKPWOU within. And of course the abatement initiatives have the heavy input of the states in nonstate governmental entities. To have reached an agreement on this abatement metrics and mechanisms again is an incredible achievement. Given the strong views that various parties have as to what is proper as far as abatement is concerned.
Mr. /STPHAOEUFPLT his testimony again is unrefuted and I believe Cogent that there is a clear multiplier effect of debt indicating the /STPHAOEUFPLT dedicate /STPHAOEUFPLT to the sack /R*ERS to abatement programs as opposed to individual payments to be used perhaps for abatement but not necessarily so.

Foregoing testimony also shows as do the abatement metrics that the plan sets forth abatement metrics and procedures that take into account developments over time and learning over time as to what works and what doesn't. Indeed they encourage that learning because one feature of the plan is a requirement for periodic reports as to the use of the funds for abatement which can then be checked to see what works and what doesn't. And what can be reallocated to what works.

The abatement procedures and metrics also include a consult ative process that takes into accounts of views of communities and those within the community in a reasonable and fair way.

The objection that is I just described really don't lay out and I didn't expect them to layout because again they're pro se objectors a legal basis for the objection. I believe though that the proper prism within which to analyze the objection legally is again the good faith test under 1129A3, given all that I have just described, it is very clear to me that the use of the bulk of the

debtors value for abatement purposes is clearly in good faith and in fact highly beneficial to those who have individual claims against the debtors as well as the communities and states that also have claims.

It is also clear to me that those procedures both for abatement and for the governance of NewCo are facilitating not only the emphasis of the Bankruptcy Code, but the broader good.

To suggest otherwise, to suggest that somehow this was an ill cooked and cooked in secret stew which I don't believe the two objectors are contending, but it has been suggested publicly by those who I don't think have been following this case or if they have should know better. It's simply incorrect and dramatically so. What this plan does within the constraints of federal law, including the regulations and guidance from the FDA is go beyond that law or that can be done to ensure, a, the safety or safe use of the debtors products, including the development of products that would assist those who are trying to recover from opioid use disorder and provide cheap and accessible at least they have the shares that would enable them to control the debtors if that was not foregone by the Sacklers. The debtors plan is in a sense is in a sense that is the Sacklers plan, it is a plan for the Sacklers benefit. While I will straightly exam that the cementment for the slack certificates is fair, one thing should be absolutely clear and is clear, and anyone who says to the contrary is again simply misleading the public, this is not the Sacklers plan. The debtors are not the Sacklers company anymore. The Sacklers only the debtors but the debtors are not run by the Sacklers in any way and have not been since before the start of this case. There is

literally no evidence to the contrary, none. Although it was not necessary because the record was clear, the examiner appointed in this case confirmed that.

More importantly, and as recognized by the examiner and as recognized by anyoning who paid any attention to this case from the start, this case was driven as much by, if not more than, the official unsecured creditors committee and the other creditors in the case who formed well represented ad hoc committees. Let primarily by the 48 states that have claims against the debtors, two states having previously settled those claims before the start of the bankruptcy case.

Led also by groups that had within them very strong representatives of public nonstate governmental entities. And Native American tribes. These creditors are in essence the only creditors of this debtor and from the start of this case all of this debtors assets were dedicated to them. They wanted more than anything else to obtain as much value not only from the debtors and the process of agreeing on a chapter 11 plan, but also from the Sacklers who were viewed by all as the other side, the opposition, the potential defendants, the payors. And it is crystal clear that the unsecured creditors committee, the /STPHAOEUFPLT and governmental entities were completely, utterly independent and focused on is that goal. They were facilitated in achieving that goal by the two incredibly experienced and effective mediators that I've already described.

And further, even after a largely successful mediation of the claims against the Sacklers, both direct by the debtors and third-party claims by others, which resulted from the mediators own proposal as to what would be a fair

settlement, which was accepted by all except the all nonconsenting state groups of the 24 states of the District of Columbia. I directed another mediation with another one of the best mediators, not only in the U.S., but the world, my colleague judge chapman. Based on her mediation report, she had over 140 contacts, discussions and knowing judge chapman, I believe they were in depth, serious and well informed before the mediation date set to see whether the nonconsenting states could reach agreement with the Sacklers.

That day turned into a 27-hour day. Judge Chapman like Messrs. Feinberg and former judge Phillips is a successful mediator because she does not brow beat people, she could not brow beat these states, that is crystal clear. She's a successful mediator because she points out the risks and rewards of not reaching a settlement and reaching a settlement. Recognizing that the process is always consensual and not coercive. 15 of the states who had previously fought the Sackler settlement and the plan tooth and nail agreed to a modified settlement as a result of that mediation.

I'm saying this not to support or show my support for the underlying settlement, but to reflect again or to illustrate again the arms length negotiation here and the fact that this is not a Sackler plan but a plan agreed to by 80 percent of the states and well over 95 percent of the nonstate governments and actively supported by the unsecured creditors committee and notwithstanding the incredible harm that the debtors products have inflicted on them.

Bitterness over the outcome of this case is completely understandable. Where there has been such pain inflicted, one

cannot help but be bitter. But one also has to look at the process and the issues for their in light of the alternatives.

And with a clear analysis of the risks and rewards of continued litigation versus the settlements set forth in the plan.

And it's that process to which I'll turn next. As I noted, the chapter 11 plan puts together two settlements related to the Sacklers. It provides for the settlement of the estates claims and when I say the estates claims, that means the debtors claims against the Sacklers for the benefit of their creditors. And the estates have substantial claims against the Sacklers. Indeed one can argue that those claims are the main claims against the Sacklers. In addition, the plan provides for a settlement of certain third-party claims, claims by others that could be asserted by others against the Sacklers and the related parties, i.e. the shareholder released parties under the plan.

I will focus first on the settlement of the estates claims. But I will note before focusing in on those claims and the settlement proposed of them that the plan is not just a plan that settles the estates claims against the Sacklers and third parties claims that are related to those claims against the Sacklers. In fact, the plan contains several interrelated settlements, with those settlements. And would not be achievable in any of those settlements fell away. They include a settlement of the complex allocation between on the one hand, individual personal injury claims and claims by governmental entities. The subject of months of mediation which I already discussed.

They also include a settlement of the allocation of value among the public creditors,

the states and nongovernmental entities and Native American tribes. Remarkably, all of those parties agreed to use the value they would receive for abatement purposes, the benefits of which I've already described. Other than the personal injury claimants and the NAS claimants, the other private claimants have also agreed remarkably to use the value they will receive for abatement purposes, not to go into their private could havers for whatever use they want to have such as buying a new x-ray machine.

In addition, during the case, the debtors settled both civil and criminal claims of the federal government. And the plan encompasses those settlements importantly including the agreement by the federal government to release 1.7 of its $2 billion superpriority claim for the benefit of the other public creditors and abatement, if as is the case under this plan, the plan meets the requirements of the DOJ settlement as far as setting up an abatement structure and the corporate governance and other public purposes that I described for NewCo. All of those things hinge on at least the amount of money coming to the debtors from the debtors and the third-party settlements of the Sackler sames. Without the $4.325 billion being paid by the Sacklers, those other settlements would not happen. The record testimony is clear on that. The private public settlement would fall apart and it's in my view assured that the abatement settlement would fall apart. That still begs the question, however, is the $4.325 billion coupled with the other agreements that the Sacklers have made, including with respect to the dedication of the two charities worth approximately $175 million for abatement purposes, their agreement to a

resolution on naming rights, their agreement not to engage in any opioid related business with the debtors or any business with NewCo and their agreement to exit their foreign companies within a prescribed time. Would not unravel the settlements already described. However at least that amount of money is required.

The settlements is compromises of a debtors claims is claims assertible by the debtors estate are a normal part of the process of reorganization in bankruptcy and are strongly favored over litigation. This is in part for the obvious reason that in bankruptcy I pie is not large enough to feed everyone in full. Therefore, the cost delay factor in deciding whether to approve a settlement or not is even greater than it is in a nonbankruptcy context. However an assessment of the merits or the claims that are being settled has much the same weight, the risks of losing a piece of the pie where there's not enough to go around are also greater in the bankruptcy context. In determining whether to approve the settlement -- I'm sorry, as far as the pop significance that settlements /STPHAOEUFPLT and compromise are a normal part of the process in chapter 11 or reorganization, protective committee for independent stock holders /STPHAOEUFPLT FERRY Inc. R Anderson in determine whethering to approve a settlement and compromise, the Bankruptcy Code must make an informed independent judgment that the settlement is quote fair and equitible and in the best interest of the estate Drexel lamb better TMT trader ferry based on the framework laid out in the /STPHAOEUFPLT ferry case, courts in this circuit have long considered the following factors in evaluating settlements one, the probability of success should the issues be lit

gaited versus the /STPHAOEUFPLT without the delay and expense of litigation and subsequent appeals two, being /STPHAOEUFPLT and protect lit /TKPWA*EUGTS if the settlement is not approved with its intended expense and conconvenience in delay including the difficulty in collecting on the judgment. Three, the interests of the creditors including the degree to which creditors support the proposed settlement. Four, whether there are other interested parties support the settlement. 5, the competency and experience of counsel supportive and experience and knowledge of the court in reviewing the settlement 6, the nature and bred of theth /STPHAOEUFPLT releases to be obtained by officers and directors or other insiders and 7, the extent to which the settlement is the product of arms length bargaining. See general in gentlemen operating LLC will often be the dispositive factor. That is unless the remaining factors weigh /HEFL in approving a settlement if the settlement varies materially the private scheme of the Bankruptcy Code /-RB the court should normally not approve it, that issue does not apply here as I've noted in dealing with the objections to classification and treatment under the plan, the plan does not vary, the priority scheme of the Bankruptcy Code or otherwise violate the classification requirements and treatment within a class of the Bankruptcy Code. I will address these factors or these elements of evaluating a settlement in a different order than laid out by the courts. Following the radium case. I will note that they are applied, nineteen context where the part of the settlement involves not the simple trade of money for claim, but also performance outcomes such as ceasing to be involved with a product or the

agreement by the Sacklers to the document depository and the like. See for example in re: Global vision products V. T-R-U-E-S-D-E-L-L, 2009SDNY2009.

As I noted, this settlement was clearly and unmistakably the product of arms length bargaining conducted in two separate mediations by capable mediators proceeded by the most extensive discovery process not only I, but I believe any court in bankruptcy has ever seen. Again the record is unrefuted. As to the incredible extent of discovery taken not only by the debtors through their independent committee which again truly was independent, but also the official unsecured creditors committee in consultation with the nonconsenting states group and the other states and governmental entities. In fact anyone who wanted to sign the standard nondisclosure agreement to permit the discovery to proceed without extensive discovery fights over confidentiality. From the very first day of the case, I made it clear, as recognized by, also by then chief district judge McMahon in affirments of the injunction that I entered that the Sackler parties and their owned and related entities would have to provide discovery far beyond the normal fishing expedition discovery in bankruptcy cases in order to have the benefit of the temporary injunction or any final stay and that is exactly what happens. I did not have to decide one discovery dispute on the record. I had numerous chambers conferences with parties over discovery disputes which led to I believe in every instance additional discovery. There are approximately 10 million documents that have been produced comprising almost, it's just unfathomable the number of pages.

Consistent with the next

factor, which is the competency and experience of counsel supporting the settlement, not only were the debtors represented by extremely capable counsel that assisted the independent committee in reviewing the debtors, in discovering the debtors claims against the Sacklers which are laid out in. /STPHAOEUFPLT and then commented on by John due bell on behalf of the board special committee. The debtors identified over a billion -- $11 billion of potentially voidable transfers to various Sackler individuals or entities. The creditors committee did its own discovery, including vetting that extensive exercise. They also thoroughly investigated estate claims that are not in the nature of avoidance claims, avoiding transfers, but claims for example piercing the corporate veil and breach of fiduciary duty which would belong to the state. Here I believe because at least as far as the record reflects, the basis for such claims that would be a generalized injury to the estate on all creditors rather than to individual creditors, see for example saint Paul fire insurance company V. Pepsi Co. Inc.

And board of trustees of teamsters local 683 pension fund V. food town Inc. So again any statement that there has not been transparency in this case, at least to those who negotiated the settlement, who again in essence represented all of the people who are creditors in this case, the objecting states, the other governmental entities, the consenting states and the creditors committee is simply incorrect. And particularly as far as an objecting state is concerned, it's just a lie, flat out, a lie. They know what they had access to. They know how extensive it was. The only argument they can make and I will address it in the future is that

the public hasn't had access to it. But of course if it had not been conducted the way it was by the public's representatives, including the very states that make this argument, there would not have been that level of discovery. Because it is not the type of discovery that the public would ever have access to, including in a trial. Or for example in an examiner's examination.

Factors three and four are closely related to each over, the interest of creditors /STPHAOEUFPLT to support the proposed settlement and four whether other interested parties support the settlement, and again I'm talking solely about the settlement of the debtors estates claims. Given the plan vote, given the support by creditors committee, 80 percent of the states, 95 percent plus of the other governmental entities, and apparently in this context the United States, although one can't really make heads or tails of the U.S. trustees objection on this point. It is clear that the creditor body by overwhelming margin supports the settlement, again after being fully informed in making that decision or having their representatives fully informed in making that decision.

The second issue or second factor which now is next to last, includes an assessment of cost first by /STPHAOEUFPLT the settlement is not approved. Is secondly, the difficulty in collecting on a judgment. I'll focus on that latter point first, i.e. the difficulty of collecting on a judgment.

As is often the case, parties who support a settlement such as hear the creditors committee, consenting states, the nonconsenting states who now consent and the debtors are careful not to lay out all of the reasons that they support the settlement,

which usually go to assessment of the merits, but generally cover legal issues including legal impediments to collection. Because they are legitimately worried that either A the settlement won't be approved in which case they're actually going to have to run of the risk of having given their opponent a road map as to the weaknesses in their case and the strikes of the /POEPBTS case. And a road map as to their assessment of the difficulty of collection. And of course the settlement in itself does not require because then it would not be a settlement a full litigation on the merits, or collection. I mean that's simply not obviously the purpose of the settlement. Instead, the circuit has directed the court to make an informed judgment based on the record before it taking into account these factors. At one level, and again this is the level that has been reported in the media by some, one would think that this factor clearly weighs against the settlement. The record I believe is uncontroverted that the Sacklers as a family are today worth, again in the aggregate, approximately $11 billion. Clearly one could collect even after the costs of collection, the lawyers fees, the tracing fees, etcetera, and the discovery has largely been taken as to where the assets are, and the preliminary injunction precluded the Sacklers from transferring their assets further away, so one would think that one could collect something approaching significantly more than $4.325 billion plus the money the Sacklers /STPHAOEUFPLT for settlement of civil claims, plus the access to or the dedication of $175 million worth of charitable assets which adds up to $4.5 billion plus the DOJ settlement.

On the other hand, the Sacklers are not a simple set of

defendants. They're a large family divided into two sides, side A and B with 8 pods or groups of family members within those. Most of the scores of Sacklers never served on Purdue's board. I had testimony from three who at one time or another were officers of Purdue, i.e. in management.

Their assets are widely scattered and primarily held offshore or by people who themselves live outside of the territorial jurisdiction of the United States.

And might not have subjected themselves sufficiently to the U.S. for a U.S. court to get personal jurisdiction over them. I want to be clear, I am not deciding that issue, nor am I deciding whether the trust or most of the Sackler family wealth is held or helding are in fact spend through a trust to collect a judgment, throughing in a possible bankruptcy case if the beneficiary of that trust were forced into bankruptcy by pursuit of litigation by the debtors, or frankly by a third-party. The beneficial interest and /STPHAOEUFPL spent through the trust may be excluded from a bankers estate, which states a restriction on the transfer of beneficial interest of the debtor and the trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under the Bankruptcy Code. That section forces one to look at applicable nonbankruptcy law which may or may not be the law of the United States with regard to these foreign trusts most of which are established under the law of /-L baile /WHEUBG of Jersey. Michael Cushing an expert in the law /STPHAOEUFPLT and the enforceability of judgments, that is U.S. judgments against trusts organized under that law. There is a substantial issue in my mind as to the collectability under that law, even of a fraudulent transfer

claim. Although it is clear to me that under the law of various jurisdictions in the U.S., including New York, that a transfer that is fraudulent to creditors into a trust is recoverable for the benefit of creditors. See securities investor Bernard Madoff investor securities LLC in addition U.S. law does not rec any self-centered /STPHAOEUFPLT that in name only are U.S. trusts. But again most of the trusts here are governed by Jersey, that is the bailiwick of Jersey law, according to Mr. Cushing's degree layerings, which is unopposed on these points electronically suggests that a different result might apply when one would go to enforce a judgment obtained in the U.S. for a fraudulent transfer or in personal debt to the trust in the aisle, bailiwick of Jersey. Through the vie count of Jersey and the Jersey court.

Again I'm not deciding those issues but given the record before me and given the agreement of substantially all the parties in this case to reach a settlement of the estates claims with the Sacklers and the due diligence they've undertaken, which has not been undertaken by the U.S. trustee, one can infer that the issue of collection is at least a real one. In addition, you're rid yam factor number two, also takes into account, or requires the court to take into account the cost of delay of continued litigation. As opposed to the benefits of a settlement. The cost and delay here I believe are on an uncontroverted based for not approving the settlement would be substantial. Those /STPHAOEUFPLT the discover for which has largely occurred, but the litigation pursuit, including at trial, would have to take place, but in addition to that, there is the cost resulting from the unravelling of

the other settlements that I crust described. I believe that the record here strongly reflects that this settlement of the debtors claims, the estates claims were not approved, the parties would be back essentially to square one on allocating the value of the debtors estate, including any ultimate recovery on the states litigation claims N. that record the litigation analysis reflected in Mr. Delconte's secretary declaration which contains a liquidation analysis is instructed under the most realistic scenarios, there would be literally no recovery by unsecured creditors from the estate in a chapter 7 liquidation, which is I believe the most likely result if this settlement were not approved. Given the unravelling of the heavily negotiated and inter-Rick atly woven compromises in the plan. One reason for that is that in a liquidation scenario, the United States agreement to forego $1.7 billion of its $2 billion superprior administrative claim for the benefit of the abatement program by the states would disappear. The United States would be entitled to all of that money first.

This leaves the last factor, which really in most settlements is the most or depending on the difficulty of collection, one of the most important factors. Mainly a comparison of the results of litigation as against the results of the settlement. As I noted as with the issue of difficulty of collection, the parties supporting the settlement have been careful not to lay out their views of the defenses that the Sackler released parties would have to the estates claims. And of course because it is a settlement, there's been no trial on the merits of those claims. On the other hand, I do have reports as to the nature of

the transfers when they occurred, what they were, and who they were to. And also some testimony as to the involvement of some of the Sacklers in the running of Purdue. Which is relevant to the estates claims suffered in apart from the avoidance of transfers, name claims for piercing the corporate veil, alterego liability, breach of fiduciary duty and the like. I also have an extensive submission by both sides of the Sackler family, or submissions by both sides of the Sackler family that do state the defenses they would argue. I heard the testimony of four members of the Sackler family, two from side A and two from side B. And that too is informed by views on the merits here, although that testimony primarily meant not to fraudulent transfer claims, but to other claims related to their role in Purdue's governance. And the decisions made that have led to trillions of dollars of claims being filed against Purdue and a criminal plea and settlement by Purdue with the Department of Justice from 2020. Again I want to be clear, I'm not making a decision anywhere close to being on the merits, this assessment has not therefore in any way something that can serve as collateral hes stomach or just /STPHAOEUFPLT nor do I particularly have any fondness for the Sacklers or sympathy for them.

I will note the following however, the Sacklers family, 77 I believe of them, received comprehensive releases from almost all of the states in 2007. In addition, 2007 is about as far back under any theory that one could look to avoid a fraudulent transfer. So one would vote for estate claims and for third-party claims be looking at primarily, if not exclusively, actions by the Sacklers or transfers to them that took place after 2007, over 40 percent of those transfers went

to pay taxes, including in large amounts to certain of the objecting states or the states that continued to object to the plan. The fact that they went to pay taxes did obviously relieve the Sacklers of an obligation. I do however have testimony from Jennifer B-L-O-U-I-N, that if the partnership structure of Purdue was not in place with the taxes running through the Sacklers, Purdue itself would be liable for them. And therefore arguably received fair consideration for the payment. The Sacklers would also argue that after the 2007 settlement with the federal government and the states, the U.S. Department of Health and human services entered into a 5-year corporate integrity agreement with the company to monitor its compliance with federal healthcare law which took place from July 31, 2007, to July 30, 2012. And that agreement is available as part of the record but can also be obtained as a matter of judicial notice.

In 2015, after, well after Purdue implemented an abuse and diversion detection program, the New York attorney general required that program to be subject to annual reviews from 2015 to 2018. They would argue that that compliance both with the LIG monitor and those reviews detailed no proper, by Purdue. And therefore, there couldn't be any improper actions by the board.

In addition they would argue that solely as board members they would not have a fiduciary duty for actions of Purdue and its management that were improper or unlawful unless they were aware of it. Of course it would be a very much a triable issue as to whether in fact they were aware of them. Those who are not on the board of course would say that law didn't even apply to them. They would also argue the applicability of

various statutes and limitations to the fraudulent transfer claims that would limit the reach back by the /STAOEUT most of the claims. The states would be /STPHAOEUFPLT to the contrary based on rights that unique /STPHAOEUFPLT like the federal government would have. To sort of a golden creditor under section 544 of the Bankruptcy Code. The Sacklers would also argue that following the 2007 settlement, they paid, meaning Purdue paid manageable amounts in settlements between 2008 and 2019 of litigation claims related to opioid matters or other litigations that would effect the solvency of Purdue. And that as recently as 2016, Purdue is receiving ratings from rating agencies that indicated that it was financially healthy. And therefore they would contend, except for the last year or so before the bankruptcy filing date where only a very small amount, relatively speaking of the roughly $11 billion of transfers that the debtors estate would contend are avoidable took place. Purdue was not insolvent and one could not impute intentional fraudulent transfer liability to it. Of course there are statements of the record to suggest that the Sacklers were very aware of the risk of litigation, a trial might well also establish as some of the testimony that I heard from the Sacklers. That as a closely held company Purdue was run more than by a normal board, by its board and shareholders. I.e. the Sacklers.

And that notwithstanding the denials by the Sacklers who testified at least those who were on the board and perhaps others who with the votes of their family members could control ultimately the board, or aware of the harms of Purdue's product and should plot rested or taken comfort in either of FDAs sign off on various labels and marketing initiatives or the

reports by office the inspector general or the auditor of the abuse and diversion detection program.

I believe that standing in a vacuum on the merits, the claims that would be achieved, the ultimate judgment that would be achieved on the estates claims and related third partied claims that it would be settled under the plan would be higher than the amount that the Sacklers are contributing. But I do not believe that they would be higher after taking into account the catastrophic effect on recoveries that would result from pursuing those claims and unravelling the plan's intricate settlements. And as I said at the beginning of this analysis, there is also the issue of problems that would be faced in collection. This is a bitter result, B-I-T-T-E-R, it is incredibly frustrating that the law recognizes, albeit with some exceptions, although fairly narrow, the enforceability of trusts, it is incredibly frustrating that people can send their money off shore to off shore trust that is may not recognize U.S. law. It is incredibly frustrating that the vast size of the claims against Purdue and the vast number of claimants the need for the interrat plan settlements at least some of the Sackler parties also have liability for those claims. But those things are all facts that anyone who was a fiduciary through the creditor body would have to recognize and that I recognize. A settlement is not evaluated in a vacuum as a wish list, it takes an agreement which means that it generally improperly negotiated and I believe that's clearly the case here re/TPHREBLGTs the underlying strengths and weaknesses of the party's legal position and issues of collection, not moral issues. Or how someone might see moral issues. It's not enough to say we need more. Or I don't care whether

we don't get anything I would rather see it all burned up. One has to freely focus on the sequences of those two approaches. I must say that when I approached the middle stage of this case before the mediation, I would have expected a higher settlement. And frankly anyone with half a brain would know that when I directed a second immediate yeahs, briefly undertaken by judge chapman, I expected a higher settlement. Nevertheless, extremely well represented and dedicated parties on the plaintiff's side knowing far more than I have laid out today of the strengths and weaknesses of the case and collection and the like agreed to this settlement.

I am not prepared given all the record before me to risk that agreement. I do not have the ability to impose what I would like on the parties. The judge is not given that power, can I only turn down the request for approval of it. Given this record I'm not prepared to do that. As much as I would like to impose a higher recovery.

I will note as far as the bona fides of the settlement concerned, notwithstanding my reservations, 100 percent of this formally closely held company that is closely held by the Sacklers is under this plan taken away from them and devoted to abating opioids ill effects in one way or another. In addition, the amount being paid is to my knowledge the highest amount any shareholder group has paid for these types of claims. Throughout the history of litigation involving Purdue, the Sacklers themselves were not targets except for the relatively modest settlements that they entered into with the states in 2007 until very recently.

The entire negotiation process in this context has magazine for identification that

target on them. Or that focus on them. While I would wish that the amount would be higher as I believe everyone on the other side in this case, including the debtors does, the settlement itself fairly reflects the standards laid out by the supreme court in the second circuit in evaluating a settlement. And clearly both it and the process in arriving at it has not been in any shape or form a free ride for the Sacklers or enable them to quote get away with it.

If what people mean by getting away with it is getting relieved of criminal liability, that is obviously not the case. And I believe given all the factors that I've outlined, they are paying a substantial and under the circumstances of this case, approvable amount as well as the other aspects of the settlement that they are agreeing to. I will note finally that as alluded to this morning by the debtors counsel, they have agreed also to enforcement mechanism that is are quite rigorous as part of the settlement agreement so that the collection problems that I had addressed or the potential collection problems are far lessened by this settlement if they don't live up to it.

Including as to the ability to hide behind foreign spin trusts. So to the extent that objectors have object today the merits of the settle of the of the debtors estate claims, I will overrule those objections.

That leaves the last issue for determination, which is the most complex issue. A third-party claims, including under a plan. That was arguably rejected by the circuit in a case that do extensively cite in re: Johns manville Corp. 517F third 52 second circuit 2008. Reverse travels indemnity company V. baile 2009. With the circuit in the left the

impression that the only source for jurisdiction due to the course of release of third-party claims and an injunction to support it is where the claim would be a derivative, I'll come back to that point in a moment. The point was somewhat cleared up in the next manville case referred to as manville four in the quickly opinion appearing at 600F third at 152. But the /KWEUGly case took it head on in that case a party who had brought a third-party claim against an insurer, notwithstanding the chapter 11 plans injection, of claims against insurers, asserting that the Bankruptcy Court did not have jurisdiction to enjoin such a claim because it alleged a violation of an independent legal duty owed by the defendant, the third-party, rather than claims that are quote derivative. Circuit disagreed that that was the limitation on /STPHAOEUFPLT imposed by it in manville three. In the /KAUP text of bankruptcy jurisdiction liability, we discuss the subject in some detail it then goes on to state after analyzing manville one, the McArthur company V. Johns manville Corp. case at 837F second 89, that there was no independent requirement of a derivative claim for the exercise of jurisdiction. Rather the claim was based upon the effect of the third-party claim on the estate, the circuit then went onto state manville three did not work a change in our juries prudence after manville two as about of a bankruptcy /STPHAOEUFPLT nondebtor claims that directly effect the RES of the bankruptcy estate, as /TPHAOEUFPLT regard to the sail /STPHAOEUFPLT inquiry as to whether travels /STPHAOEUFPLT derivative of rights and liabilities was that in the facts and circumstances of manville 3 cases alleging derivative liability would effect the rest of the bankruptcy estate.

Where as cases alleging nonderivative liability would not. However, it did not im/STPHAOEUFPLT must both directly effect the state and be /STPHAOEUFPLT for bankruptcy jurisdiction or the action to exist. It then further discussed the manville 4-case and then stated, it thus appears that our case from our case law that while we have treated whether a suit seeks to impose derivative liability as a helpful way to assess whether it has the potential to effect the bankruptcy RES, the touch stone for bankruptcy jurisdiction remains whether its outcome might have any conceivable effect on the bankruptcy estate. This test has been -- I'm continuing now, this test has been almost universally adopted by our sister circuits siting the sell /STPHAOEUFPLT Corp. that I previously cited collecting cases which in some instances have found bankruptcy jurisdiction to exist over nonderivative claims against third parties see citing in restone technologies, Inc., 4 /STPHAOEUFPLT 2 through 6 had and 267 and in redog patch U.S.A. Inc. /STPHAOEUFPLT 787, and then stating quote a suit against /STPHAOEUFPLT alleging liability not /STPHAOEUFPLT but nevertheless impose the direct impact on rest of the /PWRUT estate /UFT impair the Bankruptcy Court's ability to make a fair distribution for the bankrupts assets as a third-party suit alleging derivative liability. Accordingly we conclude that litigation of the third-party suits against the third-party would almost certainly result in the drawing down of insurance policies that are part of the bankruptcy estate of the debtor, the exercise of the bankruptcy jurisdiction to enjoin these suits was appropriate. I conclude here based upon the adverse effect of the third-party claims that are covered by the

shareholder release as I will further narrow it do effect the rest of the estate, including insurance rights and rights to indemnification and the debtors ability to pursue its own claims. Certain of the objectors cite a pre-Bankruptcy Code pre-28 section 34-case from the supreme court Callaway V. Ben ton 336 U.S. 132, 1948 for the proposition that there is no such jurisdiction. Of course section 1334 is broader than the jurisdictional mandate that applied at that time in that case. It is rather a dramatic change to the jurisdictional scheme from the bankruptcy laws administered before that time. And is meant to be interpreted broadly as laid out by the case law as well as commentators, she Howard B bushman the third power and proprietary Bankruptcy Code intervention and actions between non-debtors, 47 business lawyer 913, 914 through 19. May 1992. See also in redo you corning corp 255V445, ED Michigan 255BR455, 2002 vacated on other grounds downing Corp. 280F3648, 6th circuit 2002. One example of the courts recognition of the breadth of bankruptcy jurisdiction, under the Bankruptcy Code in 28 /STPHAOEUFPLT section 1334 although not directly on point is United States V energy resources company Inc. 1990, although again the court must go through the analysis gone through by quickly and other courts defined the necessary conceivable effect on the debtors estate for there to be subject matter jurisdiction.

Although I have done that here. I will note that another case the objectors rely on in gentlemen /STPHAOEUFPLT pet rule yes, ma'am network Inc. bankruptcy SDNY2019. Has questioning the ability of the Bankruptcy Court to ever impose a release of a third-party claim as a jurisdictional matter which case

cites the Callaway V Ben ton case and does not cite the quickly case because well I don't know why. Maybe it wasn't raised to a judge. Nevertheless acknowledges that where there is quote a huge overlap between claims that a debtor is making against its parent company and the various other parties were making against that nondebtor company or where there is a direct connection between the asset or the claims of the debtor and the contributions that were being made for both resolving those claims and claims basically aligned with those claims, those estate claims such a release would be appropriate, at 727. So I conclude that there is depending on the nature of the release jurisdiction to enter an order enforcing a plan that has such a third-party claim release in it. And that jurisdiction is based upon the effect of the claims on the estate rather than that the claims are quote derivative. Although if they are derivative, that is a good sign that they effect the estate. Again see quickly 667F3 at 52. The objectors have also raised the objection that the release of third-party claims is a violation of due process under the constitution, there are really two aspects to this objection, the first is one that the courts in this circuit do not accept as part of a settlement of the claim that channels the settling funds to the estate. See manville 89, 91 through 92, second circuit 1988. And in re: Care one offices S. P. A. R. lynch V. lap /TKEPL limited 592VR489504 through 505, see also in remill em /STPHAOEUFPLT holding II LLC 575273 bankruptcy Delaware 2017 affirmed 591VR, 559D Delaware 2018 affirmed 126 third circuit 2019 cert denied, 140 supreme court 20852020, a cord confirming a plan with releases does not rule on the merits of the state law claims or in this case third-party claims

being released.

The other aspect of the due process objection goes to the notice that was provided with respect to the release. It is now clear under the plan that only holders of claims against the debtor or debtors are being released under the third-party shareholder release. And it is clear from the factual record that holders of claims received in my view due process notice not only of the bankruptcy case, but of the plans intention to provide a broad release of third-party claims against the shareds and the related entities related to the debtors as a whole, indeed at that time with that notice, including the simple form notice that went out, the release was far broader than it is today to argue that because it was more complicated than because it was broader is somehow a violation of due process is equally incorrect. Ultimately the issue of what processes do requires a court to ask whether in the connection with the confirmation hearing, notice was sent that was reasonably calculated under all the circumstances to apprise interested parties of the pendency of the request and afford them an opportunity to present their objections. Lain be central happenover /PWRUFS trust company 1950, see also /EL /STPHOEUFPLT in remotors liquidation company says 829135158 second circuit 2016. As noted by the circuit in this case, this requirement always /STPHAOEUFPLT bankruptcy proceedings and what is reasonably known by the debtor of the party who would be effected by the action that the debtor is taking. It appears to me again based upon Ms. Finnegan's testimony that holders of claims receive sufficient notice of the release indeed the broader assumption I believe fostered in the media is

that the release even included criminal liability which it doesn't. In fact there were multiple objections to the plan based upon the third-party release and I conclude that compliance with the procedures laid out by Ms. Fin began and with the dictates of bankruptcy rule 3016 which requires bolding of the release language is in fact sufficient. See for example hospital Inc. 48 bankruptcy D. New Mexico 2016 in reretail group Inc. 2021WL2188929 bankruptcy ED Virginia May 28, 2021. And for Nova capital Corp. V Larson pharmaceutical Inc. 2003 U.S. district Lexus 26681 affirmed for Nova capital Corp. pharmacy Inc. 425F3129411 /STPHAOEUFPLT sir you 2005. If someone can make the case after the fact that they did not receive the type of notice that Mr. Fin began testified to or the debtor could be said to be aware of them tombly and therefore given the approved notice they would have the right to come back and argue that as was the case in the motors liquidation second circuit opinion that I cited. But as far as the record before me is concerned confirmation and request for approval of the third-party release satisfied due process.

The next objection to the third party release provision in the plan pertaining to the shareholder settlement is an objection based on the power of the Bankruptcy Court to issue a final order confirming the plan it has been addressed now at length in two opinions that that I will simply refer to that I believe the logic of these opinions cannot be improved upon as far as the Bankruptcy Courts authority and the context of a concededly core proceeding, namely consideration of whether a chapter 11 plan should be confirmed or not, which is the fundamentally central aspect of a chapter 11-case is in fact core so

I will refer parties to those opinions. Lab holdings 2LLC /STPHAOEUFPLT also applicable here I believe directly on point is lynch V. lap /TKEPL limited in recare one offices S.A. R. L. 592V /STPHAOEUFPLT DSNY twenty affirmed holding limited curon offices S. P. R. L. 2019 U.S.A. Lexus /STPHAOEUFPLT second circuit 2019, I will note that in that affirmance, the circuit did not reach the determination by former chief judge McMahon that this was a core, this type of an injunction is a core proceeding within a core proceeding, but I believe her logic is correct. And I believe that that logic will distinguish her statement in done way V. Purdue pharma LP619BR318. Where she was dealing not with a chapter 11 plan, but rather a request for a preliminary injunction under 105 of the Bankruptcy Code and in that context concluded I believe correctly although she was reversing me on the point that in that context the court had only related to jurisdiction because it was not a core matter like a plan. At least that's how I read this. That still leaves however the merits of the application of the court's jurisdiction and power to enter a final order to the third-party claim release and injunction in the plan pertaining to the shareholder release parties.

Most of those -- let me take a pause for a second. Most of the case law on this topic and there's a lot of case law at the circuit level as well as at the lower court level does not deal with the foregoing jurisdictional and article three article 1 power issues. Now it deals with the statutory source for the claimed ability to enforce a coercive release of a third-party claim and the limited circumstances in which that would occur. Every circuit at this point has an opinion on the

issue. The clear majority of circuits supports the issuance of releases on a basis of third-party claims under appropriate narrow circumstances. Life insurance company V. Ropes & Gray first circuit 1995. Deutsche Bank AG /TPAOEUB network Inc. /STPHAOEUFPLT second circuit 2005 and the case is cited therein from the second circuit, including the manville case that I previously cited. As well as the Drexel case I will cite in a moment. In/STPHAOEUFPLT mill yes, ma'am /STPHAOEUFPLT LLC which I just cited from the third circuit national heritage foundation Inc. V. high born 2015 and AHN Robins company Inc. 1989. In re-Dow corpsing corp 280F third through 58 second circuit 2002. In reerdine A-R-I-D-I-G-M communications Inc. /STPHAOEUFPLT 540655 through 58 second circuit 2008. And in reen/TKPWER /SOL Inc. second circuit 2009, which held even that those who hold who /TKHOEPBLTD /STPHAOEUFPLT such a release under appropriate circumstances. In reseaside engineering surveyance Inc. 107627911th sir /STPHAOEUFPLT 2018 and in re-AOV industries Inc. 21401153D C circuit 1986. Three circuits are on record first national bank and trust company Tulsa (in re: Real estate fund Inc.) 10th circuit 1990. The following can be said about those 3 cases or the line of cases from those three courts, first, they are based fundamentally on a view that section 524E of the Bankruptcy Code precludes the grant of such a release, that section says quote accept as provided in subsection A3 of this techs which is irrelevant hear /STPHAOEUFPLT discharge of the debtor does not effect the liability of any other entity on with the property of any other entity for such debt. I will note in a moment that several of the cases and I believe they employ the right analysis including the second

circuits manville 1 case refute that view as a statutory matter. I will note further that in the Pacific lumber case, 59th circuit noted quote nondebtor releases are most appropriate as a method to challenge mass claims toward a specific pool of assets. In a context of quote global settlements of mass claims against the debtors and co-liable parties, close quote. Citing a similar observation by the 5th circuit in fell able Corp. 62 if third /STPHAOEUFPLT 5th circuit 1995. That's quote was from a 67F third, I'm sorry, was from 584F third 252 from the 5th circuit specific lumber case. I will note further not are w standing /RET likes /STPHAOEUFPLT as precluding any release which the circuit had a low /STPHAOEUFPLT such as American hardwood 88 /STPHAOEUFPLT 9th circuit 1989 equating with a discharge. The circuit, the 9th circuit held that a release of a third-party claim limited to actions taken in or related to the bankruptcy case could an appropriate circumstances be imposed in a plan. Which undercuts the 524E analysis since post bankruptcy preconfirmation claims would be subject to the discharge as well.

961F third 107 -- C-B-L-I-X-S-E-T-H Credit Suisse, /STPHAOEUFPLT 10 /STPHAOEUFPLT through 815, 9th circuit 2020. I will note further that the western real estate fund case from the 10th circuit from 1990 did recognize as the American hard woods case also recognized the proprietary of imposing a temporary stay of third-party claims to quote /TPAFL rate the reorganization process one wonders why if one is not bound by the 524E argument such a temporary stay could not become a permanent stay if the reorganization process would be appropriately facilitated over the objections of a small number of creditors who assert

third-party claims. In any event, that opinion has been interpreted and I believe Cogently, although fairly bravely, by a court in the 10th circuit, is not standing for the proposition that 524E, the Bankruptcy Code clearly precludes all third-party releases and that section 105A of the Bankruptcy Code and other applicable bankruptcy law might in appropriate circumstances justify a release of third-party claims.

In re: Midway gold 575VR475505 bankruptcy D Colorado 2017.

The argument upon which the 3 cases that I've just gone through at some length from the 5th, 9 and 10th circuit which go against the majority of cases dealing with third-party releases. Relies upon a theory that section 524Es language which I quoted precludes to grant a release as part of a settlement under a plan. This view I believe is appropriately addressed and refuted by a number of courts including the erdime communications Inc. court, AIRIDIGM communications Inc. 519F third. At I'm sorry 640 and the 6th circuit in /STPHAOEUFPLT downing Corp. 280F36482006. It's also effectively refuted by the distinction made in the manville and lynch V. lap /TKEPL cases a previously cited which distinguish a discharge from a settlement of claims. It is also inconsistent with section 524 itself, 524G of the Bankruptcy Code specifically provides for certain third-party releases if certain conditions are met in a plan that deals with asbestos liabilities. And a trust set up for asbestos liabilities including the affirm tiff vote of the effective class in a supermajority of 75 percent which as I noted here has been well exceeded. But more importantly section 524H of the Bankruptcy Code recognizes that this provision,

524G does not mean that plans that were confirmed before the enactment of section 524G are in fact unlawful. And indeed the legislative history to the amendment makes that point. Stating section at that .111, but it became 524H rule of construction to make clear that the special rule being deviced for the asbestos claim trust/injunction mechanism is not intend today alter any authority bankruptcy courts may already have to issue injunctions in connection with the plan of reorganization. Indeed John manville and UNR firmly believe that the court in their cases had full authority to approve the trusted judgment mechanism. In other debtors other his /STPHAOEUFPLT error with similar mechanisms. The committee expresses no opinion as to how much authority the Bankruptcy Court may generally have under traditional equitable powers to issue an enforceable injunction of this kind. The committee has decide today provide explicit authority in the asbestos mayor /STPHAOEUFPLT of the claims involved. How the new statuty mechanism works in the asbestos area may help the committee judge whether the concept should be extended into other areas.

140 Congressal record appearing in 1994W L54573 October 41994. Similar commentary appears in Mr. -- /STPHAOEUFPLT remarks appearing at 140 is Congress record /STPHAOEUFPLT regarding the bankruptcy reform act of 1994. Where senator states finally, Mr. President, with respect to the senator's specific question, this section applies to injunction and in effect on or after the date of enactment. That what means any injunction may have been issued under court prior to effectment such /STPHAOEUFPLT afforded statuty from the day enacted forward

assuming it otherwise means the following criteria described earlier.

It appears clear to me therefore the case law under the code itself that 524E is not an impediment to the court's statuty impediment that is to the court's issuance or enforcement of a third-party claim release and appropriate circumstances. That raises the issue however, what is the court's statutory or other source of power. Which also has been discussed ably I believe establishing by position to comment one way or the other as to whether it's able or not, but it's been discussed thoroughly I believe and appropriately applied at the appellate level.

Again see in reerdime communications Inc. 519F third 648657, 7 /*EUT circuit 2008. Where the circuit after determining that section 524E is not a bar to the grant of release states the second related question dividing the circuits is whether Congress firm tiffly the /STPHAOEUFPLT from a creditors claims without the creditors consent. Even if 524E does not expressly conclude the releases. The Burt /STPHAOEUFPLT and rules of he can quit /STPHAOEUFPLT and his equitable powers are traditionally broad, resources Inc. Section 105 of the Bankruptcy Code codifies this understanding of the Bankruptcy Court's powers by giving it the authority to effect any quote necessary or appropriate order to carry out the provisions of the Bankruptcy Code. And the Bankruptcy Court is also able to exercise these broad equitable powers within the plans of reorganizations themselves. Section 1123B6 of the Bankruptcy Code permits court to quote include any other appropriate provision not inconsistent with the applicable provisions of this title. In light

of these provisions we hold that permits the Bankruptcy Court to release third parties from liability and to participate in creditors if the release is quote appropriate and is not inconsistent with any provision of the Bankruptcy Code. See also class 5 Nevada claimants V do you corning corp, in redo you /TKORPBG Corp.

I will now turn to what types of claims can in fact be released under that power. A topic that again directs one back to the 7th circuit questioningly case that I repeatedly cited /STPHAOEUFPLT 45. In that case the court extensively discussed the relation of its use of the term derivative claims both the court's jurisdiction to impose a mandatory release of third-party claims and the court's power to do so in appropriate circumstances. The use of the term derivative claim which really I believe began in the manville 3-case which appears at 517F third is an unfortunate one. There's a widely accepted definition of the term that is derivative claim. It's one, it's a claim that is asserting injury to the corporate entity and requesting relief that would go to the corporate entity. See Donohue V. bull dog estimates general partnership 696F3 second circuit 2012. The circuit has spent an enormous amount of time and resources interpreting what I would refer to as true derivative claims, i.e. those that are really claims asserted by third parties, but properly existing in the bankrupt's estate. And belonging to the estate. Much of this analysis occurred in the Madoff case where various third parties tried to pursue for their own benefit as opposed to for the benefit of the estate claims against third parties.

And the court determined whether in fact those claims were really claims of the third-party or

claims brought by the third-party that would have to be, if there was any recovery, part of the debtors estate as opposed to collected only by the third-party.

In these types of cases, the court looks at whether the relief sought by the third-party claimant against the third-party defendants are really secondary harms that flow primarily to the estate. See Marshall W. pick /ARD /STPHAOEUFPLT Madoff investment securities LLC 740F third 81 second circuit 2014. And /STPHAOEUFPLT McGee Corp. interest knocks Inc. 855F third 84 second circuit 2016. They defend the right, the strong bankruptcy policy to a rateable recovery from the debtors estate, which is a requires that claims that purport to be independent of a remedy for the debtors estate, but are in fact arising from harm to the debtor before the debtors before and not the third-parties benefit. This is the type of claim that is included within the nonopioid release for non-Sackler shareholder parties.

That release is defined in the nonopioid excluded claim definition, does not exclude, I'm sorry does not include and instead excludes any cause of action that does not allege expressly or impliedly any liability that is derivative of any liability of any debtor or any other estates. If in fact those types of claims were the only claims to be released we would not be talking about a third-party claim release, we would be talking about a release that clarifies and protects the estate from back door attacks through the assertion of purportedly third-party claims. That in fact are estate claims. Instead third-party releases quite often involve independent claims, at least independent as a legal basis, if not as a factual basis. See for example in redirectionle /STPHAOEUFPLT 960F second 2851992. The claim asserted by the

California department of toxic substances control against third-parties in California department of toxic substances control, the EXIDE holdings Inc. parentheses holdings Inc. 2021 U.S. district Lexus 123D Delaware July 26, 2021.

And in car leany V. card carp can /STPHAOEUFPLT in recard Corp. 342BR45SDNY2006, the question is what sorts of independent legal claims are properly covered by a third-party injunction. On this point as in so many others, the circuits opinion in the quickly case albeit in that it discusses liability under section 524G provides real guidance. In that case, the party relying upon a third-party release insurance company argued that because the claim against it would not have arisen but for the debtor, because the debtor distributed its products, it would be covered properly by the release and the third-party claimant said otherwise. And in this instance as opposed to the jurisdictional argument, the circuit agreed with the claimant.

The court concluded that the but for test creates too much of an accidental Nexus to the bankruptcy estate. And that instead the third-party claim to be subject to the injunction must arise as a legal consequence of the debtors conduct or the claims asserted against it such that that conduct must be a legal cause or a legally relevant factor to the third-parties alleged liability. 676F third at page 59 through 50. This is a consistent theme throughout the case law.

An independent liability may be enjoined if it is dependent on the debtors liability through conduct of the debtor. Car in re-WR grace company 900F third 126136. As stated in the card Corp. case which I previously

cited, if there is an identity of interest between the debtors and the nondebtor Lex with related conduct which would not exist as a liability to the third-party but for the debtors conduct is the proper subject of a third-party injunction. Similarly the court in in refirst energy solutions Corp. 606VR720 bankruptcy ND Ohio referred to an identity of interest with the debtor and between the debtor and the third-party claimant where the debtor is primarily reliable and one can view the nondebtor parties as secondarily liable is the relevant consideration. So in con/STRAOUG the proprietary of the court's exercise of its power to grant a, or impose a nonconsensual third-party release, that type of relationship must underpin the release. Otherwise the release would be too broad, it would release for example claims based on a guarantee which is a separate factual premise than the debtors conduct. It would for example in this instance release a claim if one of the Sacklers negligently prescribed an opioid to someone. Which clearly under the case law is guided by the quickly case would not be the proper subject of a third-party release. So while a firmly believe that I have jurisdiction and power under article 1/article 3 of the dichotomy of the constitution, and there is a sufficient source of that power in the Bankruptcy Code itself in sections 105 and 1123A6 as well as in the court's inherent equitable power, which has been recognized by bankruptcy scholars in this area including as applying to third-party injunctions and claim injunctions and releases, see for example Adam J. leave ton article toward a federal common law bankruptcy, judicial law making in a statutory scheme 80 American bankruptcy law journal 1, 2006, I

believe that they extent one is not imposing a release of a truly derivative claim, the claim needs to be sufficiently bound up in the debtors own actions, albeit that it's a separate independent legal claim that would be payable if recoverable to the third-party as opposed to the debtor. For the claim to be subject to the injunction. In that regard, regardless of whether or not in applying the standard, which I still have not yet gotten to as to whether third-party claim release is appropriate or not, would require that the shareholder releases in paragraph 10.7B by the releasing parties be further qualified than they now are to apply where again following the guidance of the quickly case a debtors conduct with the claims asserted against it are a legal cause or a legally relevant factor to the cause of action against the shareholder released party. Otherwise the release would improperly extend to for example the prescription example that I just gave. On the other hand, having read the objective states complaints against the Sacklers, which is noted not only by me, but by chief district judge McMahon in her Purdue opinion, essentially dove tailed with the objecting states objections to -- I'm sorry, claims against the debtors. Those claims that is would be properly covered by the shareholder injunction. As I said, that leaves still the issue of whether under the applicable standards and the facts of this case, the third-party releases should be imposed. Those standards vary among the circuits. In the second circuit, in the in remetro media fiber network Inc. case, second circuit 2005, the circuit went through a number of circumstances where courts have exercised their power including under section 105 of the Bankruptcy

Code in furtherance of section 1123A6 and observed that courts have approved nondebtor releases when the state receives substantial consideration, the enjoined claims were channelled to a settlement fund rather than extinguished, the enjoined claims would indirectly impact the debtors organization by way of an indemnity consideration and the plan otherwise /STPHAOEUFPLT provided for a full payment of the enjoined claims. The court went onto state, however, that this is not a matter of factors or prongs and further that no case has tolerated nondebtor releases absent the findings of circumstances that may be characterized as unique. Not recognizing further that such releases can be abused, particularly if they are for insiders. And need to be supported by sufficient findings by the Bankruptcy Court. The third circuit has a similar but somewhat different standard as laid out in the ex /AO*EUD case where the court states citing, with citations omitted, but citing among other cases continental airlines, to grant nonconsensual releases a court must assess fairness, necessity to the reorganization, and make specific actual findings to support these conclusions. These considerations might include whether one the nonconsensual release is necessary to the success of the organization, the releasee have provided a critical financial contribution to the debtors plan, the releasees financial contribution is necessary to make the plan feasible and the release is fair to the nonconsenting creditors. I.e., whether the noncun con/STPHAOEUFPLT in exchange for the release.

Other circuits, including the fourth and 11th circuits and the 6th circuit have applied a multi factor test as well that is in in

some ways /STPHAOEUFPLT similar, usually an indemnity relationship such that a suit against the nondebtor in a/STPHAOEUFPLT or will deplete the assets of the estate to the nondebtor has contributed substantial assets to the reorganization, three, the injunction is /SERL to reorganization, namely the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity for contributions claims against the debtor, four, the impacted class or classes overwhelmingly /STPHAOEUFPLT provide the plans provide a member /STPHAOEUFPLT pay for substantially all of the class ors class effected by the injunction. 6, the plan provides an opportunity for those claimants who choose not to settle if x recover in full, and /STPHAOEUFPLT made a record of specific factual findings to support his conclusion.

The 7th circuit has a very broad standard although noting the potential for abuse whether it needs to be a finding that the release was an essential /STPHAOEUFPLT fruit exchange of good and valuable consideration.

That will enable unsecured creditors to realize distribution in the case in re/STPHAOEUFPLT 526F third 856, 7th circuit noun 9. Again according to /STPHAOEUFPLT none of these factors is dispositive, but they do need to be considered in relation to the record and they do need to be in the context of truly unique circumstances where the release is necessary to the plan. Certainly circumstances of this case are unique, every chapter 11-case has its own unique factors and difficulties but I believe this case is the most complex case given the issues before the parties and ultimately the court that I have ever seen and that has come before

the courts under chapter 11.

At least that view is confirmed by the parties to this case. They were represented by extremely capable experienced counsel. It is also clear to me that for the reasons I already stated, that the monetary contributions by the Sacklers are absolutely critical to the confirmation of this chapter 11 plan. Without them I believe the plan would completely unravel including the complex interrelated settlements that depend upon the amount of consideration being supplied as well as the nonmonetary consideration. Now it is also the case that the plan has been overwhelmingly accepted including by the classes effected by the third-party release well above the 75 percent supermajority in section 524G and recognizing the proper classification scheme of the plan over 95 percent of the creditors in the classes where there are objections.

It is also clear to me that being paid by the Sackler released parties or shown to the release parties is in fact substantial as I noted earlier not only is it substantial in dollar terms, I believe it's the largest amount that shareholders have paid in such a context ever. It has been argued that either in light of the aggregate amount of the claims or the amount of the Sacklers wealth, it is not substantial. And I've considered that point carefully as I noted, I would wish the amount would be even higher. However as a raw matter, it is undoubtedly a substantial amount. Moreover, and this highlights the distinction from this case from one of the factors that I have cited which is that the plan quote provides a mechanism to pay for all or substantially all of the class or classes effected by the injunction.

Clearly that will not occur

here as I already found United States's claim for example is receiving only under 1 percent of the recovery and it's fair to assume that other claims that are yet to be liquidated would come nowhere close to being paid in full. On the other hand, there have been a number of cases that have held that a full recovery is not necessary and indeed one would question why you really need a third-party release when you can project a full recovery anyway. See in refan steel family Corp. 2018 bankruptcy Lexus, bankruptcy SD Iowa October 26, 2018, and B-E-H-R-M-A-N-N V. national heritage foundation Inc. 663F third 704, fourth circuit 2011.

A more relevant consideration I believe is whether the plan in its third-party release provision is in fact fair not just to the estate generally and all the creditors in the estate, but also to those who are bearing the brunt of the third-party release, which is the view under the third circuit standard and I believe a proper one.

The concept of Marshalling from two different sources of recovery from some cases, including the Dow case that I cited has been cited as an authority for imposing a third-party release, Marshalling does not require payment in full generally, it only requires payment in full from the sources of a specific recovery. Or rather the full amount of the sources available from their marshalled claims. And I have analyzed the fairness of the settlement on the third-party claimants from the perspective of their recovery if they were allowed to pursue their third-party claims. And it's in that context, if at all, that the rights of the third-parties and the amount that they would recover is relevant to the question of whether there's a substantial contribution

to the reorganization.

It is without doubt the case that without these releases, the Sackler shareholder released parties would not agree to the payments under the plan. And they understandably I believe are insisting on that because that is their consideration in return for the consideration they are providing to the estate. I've already concluded that without the releases the plan would unravel and in all likelihood the debtors case would convert to a case under chapter 7 of the Bankruptcy Code.

In that context, I've already found that from the debtors estate unsecured creditors like the objecting creditors would in all likelihood recover nothing or at most as set forth in the unrefuted liquidation analysis by Mr. Delconte /STPHOEUFPLT $600 million which is a high case scenario that I am skeptical about. I've already gone through the dilutive effect resulting from conversion of the case to chapter 7. The question is whether in that scenario, the third parties could pursue the Sackler released parties to make up the amount that they would have lost from the estate distribution by pursuing their third-party claims.

In large measure by analysis of that reasonably projected outcome is quite similar to my analysis of the collectability and merits of the estate claims against the Sacklers.

Although I believe that the fraudulent transfer claims against certain of the Sacklers are probably the strongest of the suite of claims against them and they would clearly be aggressively pursued by a chapter 7 trustee, the problem is that the senior claims of the United States and the costs and risks of pursuing them would eat up most of the value. As far as the third-party claims are

concerned they do derive from the same facts pertaining to the debtors activities, operation and marketing with respect to opioids, but are further narrowed to claims against the directors and controlling shareholders related to those activities. Again we did not have a full trial regarding the merits of such claims, however, the record before we /STPHAOEUFPLT arguments I've gone through already with respect to the /STPHAOEUFPLT include rare piercing and breach of fiduciary duty and the like which all involve conduct by controlling shareholders and directors. And I won't repeat them here because I believe they equally apply to the third-party claims. In addition the same issues pertaining to collection apply, except that the well recognized ability to break through a trust if in fact this is under U.S. law, if in fact it was a recipient of a fraudulent transfer would not apply to the third-party claims which are not fraudulent transfer claims, but rather direct claims which would have to be asserted against the Sacklers, all of them, and/or their companies which are held in trust in the bankruptcy -- I'm sorry, the bankruptcy, the structure testified to by Mr. Cushing. I'm not again ruling that that structure could not be breached, but I believe it would be very difficult to do so. Particularly aware0ed to was undercut. So it would appear to me that the aggregate recovery by the objecting third-parties in respect of their claims against the debtor and against the third-parties which again I have narrowed to fit within the claims of the rubric would exceed materially the recovery if I did not confirm the plan and they pursued their third-party claims separately as well as their claims against the debtor in the inevitable liquidation of the debtor under chapter 7.

A related argument made by the objectors is that contrary to what I've just gone through, the plan does not satisfy the best interest test of section 1129A7 of the Bankruptcy Code. There is a statutory response to that argument that under the plain meaning of section 1129A7 I believe is well taken. That section again provides that with regard to a party that has not accepted its treatment under the plan, the such holder of a claim will receive or retain under the plan on account of such claim and I went to emphasize that /STPHAOEUFPLT on property of a value as the effective date of the plan that is not less than the amount that such holder would so reef and I'm emphasizing the word so receive will retain if the debtor were liquidated under chapter 7 of this title. It is clear to me that as a matter of grammar, the comparison is between the amount that the objecting creditor would receive under the plan on account of its claim and what it would so receive again on account of its claim under chapter 7 and would not look to rights that it would retain against third parties. I recognize that the interpretation of section 1129A7 by two of my colleagues who I greatly respect in in re: Die tech holding /STPHAOEUFPLT bankruptcy SDNY2019 and in requickly company 437BR102 bankruptcy SDNY2010, are to the contrary that one should look if one can make a reasonable determination at one that rights would have not in with respect of one's claims, but in respect of other claims, third-party claims in a liquidation in comparison to the rights that one would have based on one's claim under the chapter 11 plan. Neither of those cases however addresses the plain meaning argument that I've just gone through and I believe the plain meaning would rule here.

Importantly though I have not limited my ruling to the plain meaning interpretation that I just gave. I have instead assessed based on the evidence before me in this settlement hearing context what I believe would be recovered by the objecting creditors in a chapter 7-case both on account of their claims and on account of their third-party claims. And based on that assessment, I concluded they would recover more or at least as much as that recovery if I confirm the plan.

If both the die tech and quickly cases, the court's stated that if the recovery from nondebtor sources, i.e. the claims would be released under the plan were neither speculative nor capable of estimation, or speculative and hypothetical, then the analysis could be done. In both of those cases, the courts determined in 1 case based on various admissions by the debtor, that is the quickly case as to the settlement history over a 20-year period of such types of claims and at least some evidence which was the only evidence offered by the planned proponent which has a burden of proof which showed that for at least a relatively short period January 2nd /STPHAOEUFPLT there were payments on settlements that could be owe vaulted and therefore one could evaluate settlement payments generally and therefore the claims were capable of being estimated, the planned components /STPHAOEUFPLT the objecting states have suggested that in similar failure of proof existing here given the absence of any expert testimony to try to value the claims of the objecting states against the third parties, mainly the Sacklers and the related entities. It is true there is no such expert testimony but I believe it would have to be expert fact testimony, not an assessment of the

strengths and weaknesses of the claims including the costs of pursuing them, the risks of collection and the die dilutive effect of all of the other claims that /STPHAOEUFPLT all the other creditors in this case, including all of the other states who otherwise agreed to the plan because it is perfectly obvious that they would not agree to let the objecting states alone pursue the shareholder released parties on the theories that would equally apply under those other states laws. Collectively, the states and territories of this case filed proofs of claim aggregating in an unliquidated amount at least 5 /STPHAOEUFPLT the objecting states share that adds up to 482 /STPHAOEUFPLT or roughly 22 and a half percent that comes down to 450 billion or less than 21 percent if you exclude West Virginia which really was not raising this issue. If you factor in all of the other claims some of which would clearly have third-party claim rights that you're talking about a largely dilutive effect on the recovery on top of the liability and claim collection issues that I've already described.

I believe that given the /POS /STPHAOEUFPLT of any settlement history here with the exception of the payment to the state of Oklahoma by the Sacklers and their payment to the United States in respect of their civil claims, that assessment which is fundamentally an assessment by the court of the legal risks and implementation risks of pursuing a lawsuit is a proper assessment and I conclude again that the settlement is fair to the objecting states after having conducted that assessment their claims of large measure were dependent upon /STPHAOEUFPLT debtors truly and therefore not truly derivative claims would depend largely on finding whether

any of the Sacklers was personally responsible for the misconduct of Purdue. Such a trial might actually show that. I believe the testimony before me was inconclusionive on that point, although clearly I accept that there is substantial risk for the Sacklers that that point would be wrong by the objecting states so in addition to that risk for the reasons I've already stated, there are substantial cost and collection risks that I don't need to go through again. As far as the /STPHAOEUFPLT proof that would need to be shown I've not gone through every state's applicable law on this point, but I will note that the main case they have cited in their briefs, gray son in orderic construction Inc. 1979 and state V. /RAL /*FL /STPHAOEUFPLT 87 Washington second 2983221976, both of which found individual /HRAOEUBGT based on the controlling shareholders personal actions for many of the unlawful acts and practices taken by that person's corporation.

The last argument made by the objecting states is that the nonconsensual third-party release and injunction is a violation of their sovereign entity and police power. There is no such bar in the Bankruptcy Code itself. The Bankruptcy Code and traditional code and certain carefully prescribed instanceness recognize the police power of states and other governmental entities, but only in limited context thus in section 362B2, Congress provided an exception to the automatic stay for the liquidation of a claim in the exercise of police power but stayed its payment and such claims are in fact as is well recognized not exempt from chapter 11 debtors discharge. Similarly 28USE section 1452 preclude the removal to the Bankruptcy Court which is generally permitted under that section of a

pending cause of action, if it is one that is asserting the police power. The scope of the police power in those exceptions has not been decided definitively by the second circuit. As noted in a thorough discussion? /STPHAOEUFPLT switch litigation 2014, the exception, the definition of police power for purposes of these exceptions has evolved over the years from a focus on distinguishing between actions to enforce police power with respect to conduct on the one hand and actions to provide for financial recovery on another. After board of governors of the Federal Reserve systems V. M Corp. financial Inc. 502S32401991, the focus has turned more to the from the subjective merits of the government entities exercise of its police power in a given case. Only to the purpose of the law that the government is attempting to enforce. Even if that purpose which is well recognized may include the payment of money.

I accept that broader definition of the police power. The fact that a governmental entity is looking to collect money I believe is not enough to take it out of the police power exception. But again that exception is a limited one in the Bankruptcy Code and the judicial code. It is well recognized indeed the 10th circuit states it is a matter of corn book law that actions accepted from the automatic stay including under the police power may be subject to specific injunctive relief under section 105A in re: Western real estate fund 922F second 922959, 10th circuit as a previously sited and in recommonwealth companies Inc. United States V. commonwealth companies Inc. Bankruptcy paragraph 362.05. And as that discussion notes the legislative history to the section which recognizes the power to enjoin

notwithstanding that the injunction is owed the police power.

H10950 November 12, 1997 and HR rep 95595, 95th Congress first session 1977, September 8th, 1977, quote subsection B lists 5 exceptions to the automatic stay, the effect of an exception is not to make the action immune from injunction, close quote. As far as the limitation on the power to assert the police power, at least as far as general assertion of states rights over the power of the Bankruptcy Code, see in repea body energy Corp. 717, 8th circuit 2020. And in fact plan injunctions at least in one instance at a recent one had been imposed without any quams about the police /STPHAOEUFPLT see California /TOBGS /EUBGS substance control XV holdings Inc. 2021 U.S. district Lexus /STPHAOEUFPLT D Delaware July 26, 2021. At this point given the states agreement including the objecting states agreement to the public private allocation and the no act allocation under the plan and the carveouts from the plan release, the only thing that, of tangible note that the states would be obtaining here would be money. Which they actually agreed to put to use under the plan for abatement purposes in which there not disputing the validity of in fact the markedly constructive nature of such provisions the objecting states nevertheless state that the plan deprives them of establishing a sufficient civil punishment for the released claims and certainly that is a valid aspect of the police power namely the sending of a message to others who might similarly, if it is proven against them, be shown to have improperly engaged in conduct that would subject them to the liability that the states assert they would have be able -- would be the ability to impose here and that is being released. It is clear to me

however that the states cannot have it both ways. They cannot have the results of the plan and have further punishment and the plan already provides. They are nod prepared to make that choice, unlike 80 percent of their state /PWREUTen and sisters but the againsts of such /STPHAOEUFPLT punishment would be to the detriment of all of the states and the creditors in this case.

The element of punishment besides the loss of all of Purdue and the money that the Sacklers are paying also includes I believe the agreement by the Sacklers and the debtors to provide the comprehensive document depository which is includes waivers by the debtors of attorney/client privilege for a future analysis by the states and third parties. Ms. Conroy who has been pursuing Purdue and the Sacklers longer than anyone and harder than anyone I believe has noted that that feature of the settlement is perhaps the most important one, even more important than the billions of dollars being paid by Sackler family members.

It is especially important in the public context leased by the objecting states, it will provide far more transparency to the conduct of Purdue and those it did business with and those who regulated it. Including some of these varying objectors, including the state where Purdue's main offices are, Connecticut and the federal government.

Which of course also regulate Purdue. That record is extremely important, not only for continuing to pursue lawsuits against other parties, but also to guide legislatures and regulators to address a company that has a legal product, but is also incorrectly dangerous.

As I've noted, the other aspects of the plan that deal with

NewCo also provide a model for either future self-regulation or regulation by regulatory bodies.

Each of the four members of the Sackler family who testified during the evidentiary hearing before me was asked would they apologize for their role and conduct related to Purdue. Their reactions as perhaps is typical of a family varied. None would state an explicit apology, which I suppose is understandable given the legal risks they face in making such an apology before settlement where there is an objection to the settlement. Although I will note that in a somewhat similar context that I have received an apology to victims of misconduct.

One of the witnesses frankly did not accept any level of responsibility and the other three with different degrees of emotion did in terms of stating their regret for what their company had done.

A forced apology is not really an apology. So we will have to live without one. The writer Stan doll wrote that most people do not forgive, they just forget. Given the nature of this settlement, including the document depository, forgetting will be impossible. To me those are elements of the settlement that more than justify the admittedly serious implications even in a context where the real relief now being sought by the states has been agreed by them in overriding their assertion of their own independent police power rights. So assuming that the change to section 10.07B of the plan will be made and I will not confirm the plan if it isn't made that I outlined and assuming one other change that I believe is necessary, I will confirm the plan.

I do so agreeing with the creditors committee and everyone else on the other side of the table, including the debtors from

the Sackler family that I wish the plan had provided for more but I will not jeopardize what the plan does provide for by denying confirmation.

The other change to the plan that I believe is required is to the provision found at paragraph 11.1B of the plan on page 146, which directs to prosecute for a nonopioid excluded claim, which is truly a derivative claim in the normal definition of the term. Unless such person first obtains leave from the Bankruptcy Code. Consistent with my remarks to counsel for the Canadian municipalities, that provision should be made clear that it applies only to causes of action that colorably is a nonopioid excluded claim. Ie, the cause of action is for example for fraudulent transfer claim brought by Purdue Canada. Or some other claim it should not have to go through the Bankruptcy Court. So I will confirm the plan only if the following phrase is added after the phrase nonopioid excluded claim in the third line of 11.1E "if such cause of action colorably is a nonopioid excluded claim.

That is different than the stricken language which said the claim must be colorable, this is one that's colorably an excluded claim.

So as I noted at the beginning of this hearing, I have an over one hundred page confirmation order, I have not reviewed it in detail, I've given you a several hours long ruling for which I apologize for the length of. I will go through the confirmation order carefully, but I will confirm the plan if it is modified in the two ways that I've noted during my ruling.

MR. HUEBNER: Your Honor, thank you very much. With tremendous apologies for even needing to speak at all after a

six-and-a-half hour bench ruling without a break, there are two housekeeping matters with respect to statutes of limitations and the injunction, I'll ask Mr. /KEPL net can I to turn to in a minute, those will hopefully take 45 seconds, I have one thing before that your Honor I also raise with some hesitation. In the course of the six-and-a-half hours, your Honor, I believe we might have misheard, but we might have heard you say that the majority of the Sacklers assets are in trust organized /OURPBD /STPHAOEUFPLT for the record your Honor, we think you may have intended to refer to the Mortimer A side of the family, according to the testimony, including his report at JX3092 docket 3488, the A side of the family has substantial asits in trusts under the bailiwick of Jersey. The documents also reflects the B side, which is the Raymond side, which is largely the domestic side does not have equally similar assets outside the United States --

THE COURT: But they do recommend in /STPHAOEUFPLT trusts.

MR. HUEBNER: Exactly, your Honor, we were quite confident we didn't /STPHAOEUFPLT mean to rely on manual /REUT of overall assets being in the Jersey trusts, but rather in various trusts, the A side has a lot of money in Jersey, the B side does not, which is what theed evidence shows and we want to make sure that as you said that the record accurately reflected sort of what you --

THE COURT: As I said at the beginning of my ruling, I will you go through it and correct any misstatements I made to that effect although the ruling won't change. The B side has most of its assets in trust.

MR. HUEBNER: Thank you, we all know /STPHAOEUFPLT let me now put myself back on mute and ask Mr. /STPHAOEUFPLT to handle two

quick housekeeping matters and I agree there's nothing further certainly from the debtors.

THE COURT: Okay.

DAVIS POLK: Your Honor, Benning /STPHAOEUFPLT of Davis Polk for the debtors, den with apologies, you must be exhausted. Two I hope administrative matters, the first back to preliminary injunction, the following the entry of the court's bridge extension on Monday docket number 286 in the adversary proceeding numbered 19-08289, the preliminary injunction is now set to expire today. As I mentioned on Friday, there's a provision in the proposed confirmation order that will ex /TEPD the preliminary injunction through the effective date, that is paragraph 56A of the proposed confirmation order, bankruptcy rule 3020E and paragraph 66 of the order provide that the confirmation order will be stayed until the expiration of 14 days after the entry of the order unless the court orders otherwise. There will therefore be a small gap in the protection afforded by the preliminary injunction and the voluntary injunction unless the court enters a second bridge order. So as I for/STPHAOEUFPLT the debtors requestfully request that the court enter another bridge order extending the preliminary injunction through entry of the confirmation order and the expiration of the 14-day period stay period we just described.

So that's, he guess I can go on, but we spoke into the easy /STPHAOEUFPLT and they support this. And given my colloquy with the court on Friday about the second bridge order today I assume the nonsawn senting states are in a position to confirm the voluntary compliance with the extension rather than to be formally bound by it which is consistent with past practices. So if the

representatives of nonconsenting states are on and could indicate that on the record that would be wonderful, I see Mr. Gold.

MR. GOLD: Your Honor, Matthew gold from Kleinberg Kaplan representing Washington, Oregon and District of Columbia, although maybe I should let Mr. Troop go first, but can your Honor hear me.

THE COURT: I can, thanks.

MR. GOLD: I would defer to Mr. Troop who speaks on behalf of more states if he wish tos go first otherwise I'm prepared to speak.

MR. TROOP: Your Honor, Andrew troop nonconsenting state group, I have not been received any information or suggestion that the members of the nonconsenting states will not continue to /STPHAOEUFPLT volume temporarily with the injunction through an additional extension, but we did not solicit on that point specifically I will never to any /STPHAOEUFPLT if they think otherwise, but I don't think there should be an issue your Honor and I will take that --

THE COURT: Okay.

MR. GOLD: Your Honor, this is Matthew gold again. As Mr. Troop said, we certainly have not had any opportunity to discuss with our clients this particular request, I think it would have been far preferable in the debtors in soliciting the opinions of all the other parties had spoken to us first rather than making this request in open court during a hearing, but it is obviously too late for that.

The one question that I do not -- one thing I do not understand from the way Mr. Cam net can I put it is that we have been given to understand that the effective date under the plan occurs not 14 days after the entry of the confirmation order, but at least 82 days after the entry of the confirmation order, so that what Mr. Cam is requesting here is

not a 2-week extension of the injunction, but a 3-month extension of the injunction and I would at least appreciate some clarification from Mr. Cam on that point so we can understand what's considered brief or not in this con.

THE COURT: Fair point, it wouldn't be limited by time, right, it's limited by definition.

DAVIS POLK: I'm sorry, the confirmation order extends the proposed confirmation order extends the preliminary injunction to the effective date, the effective date is still the effective date of the plan, those are two different things, the order would give us the bridge to the effective date.

THE COURT: So this is time to get the order in and to have it be --

DAVIS POLK: That's it.

THE COURT: So I think it is 14 days unless there's a stip A pending appeal.

DAVIS POLK: And your Honor to say the obvious, I said this was going to happen last Friday, this is not a surprise at all. So --

THE COURT: It wasn't a surprise to me. So look I am perfectly happy to have the states continue to agree as opposed to having /STPHAOEUFPLT there's value to that that I understand. But if they were to agree in all likelihood I would extend the injunction through the entry of the confirmation order. And the order becoming a final order.

DAVIS POLK: Thank you your Honor. The second issue as your Honor knows the shareholder settlement agreement contains a unique mechanism we called the snap back in the event that certain breaches of the shareholder settlement agreement occur, the MDT can trigger a snap back by filing a notice with the court at which point both the shareholder releases and the shareholder injunction will unwind with respect to any breaches

by the shareholder parties and the MDT and the releasing parties can then sue the breaching shareholder parties under the released causes of action. To ensure that these remedies are maximally effective, it is necessary to preserve those claims during the life of the settlement agreement or until the parties subject to the snap back have fully performed their obligations. According so section 10.9 of the plan and paragraph 32A of the con/TEURPLation order they toll any statute of limitations that apply to the shareholder release claims. However, we are phrased with a potential very small gap because those provisions of the plan and confirmation order will not take effect until the 14-day stay of the confirmation order expires. And we're facing the end of the tolling provisions in section 108A2 and limitations in 546A1A because we're approaching the second anniversary of our filing. So we have a proposed order which is to make sure that the tolling provisions provided by section 10.9 of the plan is in place as soon as possible and before the 14-day stay runs. So the proposed order thus effectuated only the tolling provision and plan carp filmation /STPHAOEUFPLT start now, the applicable statute of limit aces for the shareholder released claims and exactly the same way as it's provided by the plan and paragraph 32A of the confirmation order and the tolling orders remain effective until the later of the date of the confirmation order becomes final and if the confirmation order is have a /STPHAOEUFPLT 225 days after the date when that occurred so folks have plenty of time to file their complaints. This is not controversial --

THE COURT: Sorry to /REUPBT up /STPHAOEUFPLT is that I stipulated order with the Sacklers.

THE COURT: Both sides A and B agree to this and I can't imagine anyone would object given that is just a way to maximally preserve the claims if God forbid there's a breach.

THE COURT: You can submit that to chambers.

DAVIS POLK: Okay, perfect.

THE COURT: When does that period expire, I don't think it expires tonight, right?

DAVIS POLK: No, we have --

THE COURT: Okay, it will get entered tomorrow then.

DAVIS POLK: We have until September 15th or 16 depending on how you count.

THE COURT: Okay.

DAVIS POLK: We'll get that on file.

THE COURT: Submit that to chambers and it will get entered tomorrow. I expect the confirmation order probably will get entered tomorrow, I do have a brief calendar in the morning but I'll be able to go through it.

DAVIS POLK: Thank you, your Honor.

MR. HIGGINS: Your Honor, very briefly /STPHAOEUFPLT may I be heard briefly, your Honor.

THE COURT: Sure.

MR. HIGGINS: Thank you. Just on a procedural note now that your Honor has ruled, the United States districtee intends to file a formal motion for a state pending appeal, as part of that motion we would be seeking an expedited hearing, consistent with the case management order, your Honor, we have conferred with debtors counsel /STPHAOEUFPLT on an expedited briefing or hearing schedule but as the case management order directs your Honor we will reach outed to counsel again tonight and if we're unable to reach a /STPHAOEUFPLT we would contact chambers as the case management order requires.

THE COURT: Okay.

MR. HIGGINS: Thank you, your

Honor.

THE COURT: That's fine.

MR. HUEBNER: So your Honor just so that everybody is clear so we don't get a cascade of emergency pleadings like this, as I think Mr. Gold correctly referred to before, it is of record in this case and should be well-known to everybody if it's not they should become familiar with it that our DOJ settlement approved by this court after a /HULTy hour hearing as well expressly contemplates a settlement A sentencing hearing not earlier than 75 days after the entry of a confirmation order and emergence not earlier than 7 days after that which is why as your Honor has actually advised all the parties at multiple recent hearings, including the Kirk hearing, this company can't come out for several months and I think at this point, you know, to start burdening the docket with emergency motions, there's got to be a way to work this out more thoughtfully than unnecessary emergency motions when there cannot be an emergence for really rather quite a while. We don't /STPHAOEUFPLT we understand that, that's the thing we're trying to be in dialogue about, but we have a history /STPHAOEUFPLT and waiting for a thoughtful response and they never call back or email and file something that costs the estate a lot of resources as multiple parties all have to think about it and respond to it. So what I saw on the very first day of the case at the very first hearing still holds 2 years later. Please just call us and let's see if we can work something out that is efficient and not a waste of taxpayer resources and state resources that does nothing but drain money from abatement and saving lives.

THE COURT: Well Ms. Lee is very good at keeping my calendar,

she nose better than I do /STPHAOEUFPLT how long things were l take, don't tell her that because she's probably valuable to any number of law firms if they knew that. She'll find time that makes sense. I don't think it is an emergency, Mr. Higgins, I really don't. Which is something you should take into account before making such a motion.

MR. HIGGINS: Understood, your Honor, and that's why we reached out to Mr. Huebner twice about this and we will continue to talk with him for a schedule that works for everybody.

THE COURT: Among other things, I would hope someone would actually be able to read the last 6 hours of what I was talking about before we actually decided to do something.

MR. HIGGINS: Of course, your Honor.

THE COURT: Okay.

MR. HUEBNER: Thank you, your Honor.

THE COURT: All right, anything else?

MR. HUEBNER: None from the debtors.

THE COURT: All right, thank you all, thanks everyone.

(Time noted: 4:48 p.m.)